

DUHIGG, CRONIN, SPRING & BERLIN, P.A.

Attorneys at Law

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DAVID DUHIGG
DAVID M. BERLIN
NANCY CRONIN

THIS FIRM CONDUCTS A TRIAL PRACTICE EMPHASIZING
PERSONAL INJURY, WRONGFUL DEATH, PRODUCTS LIABILITY
and PROFESSIONAL MALPRACTICE.

JOHN J. DUHIGG, Of Counsel
PAUL S. CRONIN (1937-2005)
FRANK L. SPRING, Of Counsel

Via Certified Mail, Return Receipt Requested

May 6, 2014

Mayor, City of Espanola
405 N. Paseo de Onate
Espanola, NM 87532

Rio Arriba County District Attorney
1122 Industrial Park Road
Espanola, NM 87532

Officer Richard Trujillo
Espanola Police Department
1316 E. Calle Adelante
Espanola, NM 87532

Eric Garcia, Chief
Espanola Police Department
1316 E. Calle Adelante
Espanola, NM 87532

Officer Solomon Romero
Espanola Police Department
1316 E. Calle Adelante
Espanola, NM 87532

RE: Jerry Mondragon
Date of Incident: February 12, 2014

To Whom it May Concern:

Please be advised that you are hereby put on notice, pursuant to the New Mexico Tort Claim Act, §41-4-16, that Jerry Mondragon may bring an action against the Espanola Police Department, Officer Solomon Romero and Officer Richard Trujillo as a result of the following incident:

On February 12, 2014, Jerry Mondragon was driving his car in Espanola, New Mexico, and was pulled over by the Santa Clara Police after being followed for 1 or 2 miles. Mr. Mondragon stuck his hand and head out of the window and informed Officer Freddie Turrietta that he had a side arm. Officer Turrietta confiscated the gun (a P94 Ruger, serial #308-54390) and went back to his patrol car. Shortly thereafter, several other officers showed up at the scene and Officer Turrietta went back to Mr. Mondragon's vehicle with tickets.

At that time, Officer Solomon Romero went to the window of Mr. Mondragon's vehicle and asked him what he was doing with a stolen gun. Mr. Mondragon explained that the gun was not stolen. He further explained that the gun had been pawned five times at Pawn City in Santa Fe and if it was, in fact, stolen, it would not have been returned to him because the pawn shop does an FBI check. Mr. Mondragon was informed that he was not being arrested but was being detained.

Officer Richard Trujillo transported Mr. Mondragon to the detaining facility. As he was being handcuffed, Mr. Mondragon asked the officer to be careful of his shoulder but the officer just laughed and added more pressure to his arm. Officer Romero and Officer Trujillo then parked at a 911

dispatch center and smoked. They then took Mr. Mondragon to the detaining facility. Officer Romero came in and lifted Mr. Mondragon by the arm and was told by another officer that Mr. Mondragon had not yet been processed. Officer Romero said it was okay, uncuffed Mr. Mondragon and told him to call on Monday to talk about the stolen gun.

On Monday, Mr. Mondragon did call and left messages. He finally went in to get the accessories (bullets, clip, holster, holster for extra clips) but was told by Officer Romero that the District Attorney had a hold on it. Mr. Mondragon went to the District Attorney's office. They checked the system but said there was no record of it. The District Attorney's office later called Mr. Mondragon and informed him that Officer Romero said he was mailing it to Cortez, Colorado to a detective there.

Mr. Mondragon knows that this firearm was not stolen as it belonged to his father. Mr. Mondragon has never been arrested, never been charged with any crime and there are no police reports concerning him and this incident. Upon information and belief, Officer Romero sometimes confiscates items and either keeps them or sells them.


Mr. Mondragon may bring a suit against the Espanola Police Department and Officers Romero and Trujillo for:

1. taking the gun;
2. injuring his shoulder;
3. violating his constitutional rights;
4. illegally impounding his vehicle;
5. any and all other possible claims determined by discovery.

Thank you for your attention to this matter.

Sincerely yours,

Duhigg, Cronin, Spring & Berlin



Nancy Cronin

NC/kh

cc: Jerry Mondragon

City Clerk Tessa Joe Mascarenas,

The purpose of this letter (Notice of Tort Claim) is to inform you, that I intend to file a lawsuit against the City of Espanola and the Espanola City Police for injuries inflicted on me by Officer Richard Trujillo on the day of March 5, 2014. Enclosed is the account of what happened that day and the complaint that was filed.

Thank you,

Noel Romero

CITY OF ESPAÑOLA
DEPARTMENT OF PUBLIC SAFETY
CITIZEN COMPLAINT FORM

RECEIVED MAR 06 2014

You have the right to make a complaint against any Española Police Department Employee for improper conduct. The Department will conduct an investigation and you will be notified of the outcome.

Complainant's Name: Noel RomeroDate of Birth: 12-23-83 Age: _____ Sex: Male Race: HispanicAddress: 6 Finley's Rd #5^{space} City: Espanola State: NM Zip: 87532Phone(s): 505-753-8582 Email(s): _____Location of Occurrence: 215-B Lower San Pedro RoadDate of Occurrence: March 5, 2014 Time of Occurrence: 3:00 pm

Witness Name: _____ Witness Phone: _____

Española Police Department personnel involved in the alleged misconduct (if known):

Name: Richard Trujillo Badge #: 15 Car #: _____

Name: _____ Badge #: _____ Car #: _____

Description of incident (please provide as much detail as possible):

my wife and I had an argument about the hours of 12:30 on 1:00 pm on March 5, 2014, so I had my mom come and pick me up, so I would get away from my wife. So we wouldn't argue. My wife came over to my mom's house to come and get me. I finally left back with her, on the way back home she started

See Attached →

I understand that this statement will be submitted to the Española Police Department and will serve as a basis for an internal investigation. I declare and affirm that the facts contained in this statement are complete, accurate and true to the best of my knowledge and belief. Furthermore, I agree to fully cooperate with any investigation and agree to appear at any civil or criminal proceedings, if necessary. I also understand that if I attest to any intentional false statement it may be cause for criminal and/or civil proceedings against me.

Signed: Noel Romero Date: 3-6-14

Parent or Guardian if under 18 years of age: _____

Parent or Guardian Signature: _____

Española Police Department personnel accepting complaint: Victoria K. GallegosName (printed): Victoria K. Gallegos Date: 3/6/2014
Exec. Secretary

arguing with me, I told her to stop the car, so I could walk back to my mom's house, which is about 1/4 mile away. I tried to get out of the car. She speeded up the car, so I wouldn't get out. Then got to the house, I went for a walk to get the newspaper, when I got back I sat down in the kitchen going through the newspaper and listening to my mp3 player and felt a sharp pain on my shoulder. I thought she had punched me. As I reached to grab my shoulder that's when I noticed I had been stabbed by my wife. The blood was gushing out of my shoulder. Then I called 911 and told them my wife had stabbed, my wife noticed what she did to me and then stabbed herself. I attended to her to see if she was alright. Then the officer Richard Trujillo bang into the house and had me at gunpoint as I told him I was the one that had been stabbed and had called 911. The Officer got me slammed me to the floor, repeatedly started kicking me to the chest, after that grabbed me by my shirt and dragged me outside, which I was being choked by my shirt and instead of him taking me to the ambulance in threw me in his car and left me unattended by the paramedics for a good while. Finally the paramedics attended to me when I got to hospital and I also noticed a gash to my chin also. Doctors gave x-rays. Found the officer had collapsed my leg. Now I lay here in the hospital for what the officer did to me.

RECEIVED MAR 06 2014



VOORHEES LAW FIRM, P.C.
ATTORNEYS AT LAW

Scott F. Voorhees
voorhees@cybermesa.com

April 28, 2014

Ms. Alice Lucero
City of Espanola
405 N. Paseo de Oate
Espanola, New Mexico 87532

Re: Tort Claim Notice
Carlos Montero

Dear Ms. Lucero:

Please accept this letter as notice of a possible tort claim pursuant to N.M. S.A. 1978, §41-4-16. Carlos Montero was arrested by Espanola Police officer Jason Gallegos on February 2, 2014 without cause. Mr. Montero has a wrist injury from a previous accident. The handcuffs placed by Officer Gallegos caused pain in Mr. Montero's injured wrist so he asked officer Gallegos to loosen the handcuffs. In response to that request, officer Gallegos tightened both handcuffs. The tightened handcuffs caused additional injuries to Mr. Montero's wrist for which he was treated at Espanola Hospital.

When Mr. Montero went to the Espanola police department to obtain a copy of the police report, the chief refused to give him a copy. Mr. Montero was falsely charged with burglary and criminal damage to property. On March 14, 2014 the district attorney dismissed the case.

Sincerely,



Scott F. Voorhees

THE LAW OFFICE OF LUCERO AND HOWARD, LLC
20 FIRST PLAZA, SUITE 515
ALBUQUERQUE, NM 87102

WWW.LAWOFFICE-LH.COM

TELEPHONE
(505) 225-8778

FACSIMILE
(505) 288-3473

MAILING ADDRESS
PO BOX 25391
ALBUQUERQUE, NM 87125



CHRIS LUCERO
CHRIS@LAWOFFICE-LH.COM

LEON HOWARD
LEON@LAWOFFICE-LH.COM

April 14, 2014

-Via First Class Mail and Facsimile -

City of Española
Attention Risk Management
405 N. Paseo de Oñate
Española, NM 87532
Fax: (505) 747-6084

Re: Eppie Montoya v. Danny Pacheco, et.al.
Date of injury March 19, 2013
Offer to Settle Claims

To Whom it May Concern:

Joachim Marjon and I represent Eppie Montoya. The purpose of our letter is to notify you that we are prepared to file a § 1983 action on Mr. Montoya's behalf against the City of Española and one of your employees, Danny Pacheco of the Espanola Police Department. A draft of the complaint is attached for your review.


The complaint alleges that on March 19, 2013, without any reason to believe Mr. Montoya was in the commission of or had committed crime, Officer Pacheco tased Mr. Montoya in his back several times while he knew Mr. Montoya had a nine month old puppy on his person. Without question, these actions by Officer Pacheco were excessive, unwarranted, and would incite a New Mexico jury.

While the allegations against Officer Pacheco and the City are serious, Mr. Montoya is open to resolving this matter prior to litigation. Pre-litigation resolution of this matter would save the City litigation expenses, time, and would avoid negative exposure for the Espanola Police Department. Mr. Montoya has authorized us to release all claims that he has against the City and

Officer Pacheco for \$180,000. This offer is a good faith attempt to seek redress against the City and Officer Pacheco for damages incurred as a result of Officer Pacheco's actions.

This offer will remain open for 21 days. If we do not hear from you we will commence litigation against the City and Officer Pacheco.

Sincerely,



Leon Howard
Attorney and Counselor at Law

enclosures

cc: Joachim Marjon, Esq.

DRAFT COMPLAINT FOR SETTLEMENT PURPOSES ONLY

**FIRST JUDICIAL DISTRICT COURT
COUNTY OF RIO ARriba
STATE OF NEW MEXICO**

EPPIE MONTOYA,

Plaintiff,

vs.

**OFFICER DANNY PACHECO,
In his individual capacity,
and THE CITY OF ESPANOLA,**

Defendants.

COMPLAINT FOR TORT CLAIMS AND CIVIL RIGHTS VIOLATIONS

Plaintiff Eppie Montoya, by counsel listed below, brings this Complaint under New Mexico Common law, Article II Section 10 of the New Mexico Constitution, the Fourth Amendment of the Constitution of the United States, 42 U.S.C. §§ 1983 and 1988, and the New Mexico Tort Claims Act for damages resulting from injuries inflicted upon him by a City of Espanola police officer. Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. Jurisdiction and venue are proper pursuant to the New Mexico Tort Claims Act, NMSA, §§ 41-4-1-27, common law, NMSA, § 38-3-1(A) (1988) and Article VI, Section 13 of the New Mexico Constitution. All of the parties reside or do business in New Mexico, and the acts complained of occurred exclusively within Rio Arriba County, New Mexico.

DRAFT COMPLAINT FOR SETTLEMENT PURPOSES ONLY

PARTIES

2. Plaintiff Eppie Montoya (Plaintiff Montoya) is a resident of Rio Arriba County, New Mexico.
3. Defendant Danny Pacheco (Defendant Pacheco) is an individual that was employed by the City of Espanola as a police officer at all times material to the facts alleged herein. Also, at all times material, Defendant Pacheco was acting under the course and scope of his employment under color of state law.
4. Defendant City of Espanola ("City") is a person within the meaning of 42 U.S.C. § 1983. At all times material hereto, the City was responsible for the operation of the Espanola Police Department ("EPD") and for claims against it.

FACTS

5. On March 19, 2013, Plaintiff Montoya while holding his young puppy in arm visited the Allsup's Convenient Store (Allsup's) located at 444 Riverside Drive, Espanola NM,
6. The purpose of his visit of his visit to the Allsup's was to purchase sports drinks for himself and his pregnant girlfriend.
7. While inside the Allsup's, Plaintiff Montoya, with his puppy in one arm retrieved two sports drinks from a cooler and proceeded to the checkout kiosk to pay for his items.
8. While attempting to pay for his items, the cashier refused service based on the facts that Mr. Montoya was wearing a "hoodie" and was holding a puppy.
9. Plaintiff Montoya proceeded to inquire as to whether the refusal of service was an official policy of Allsup's while explaining that it was merely his wish to complete the purchase of the sports drinks for his pregnant girlfriend who was sick at the time.

DRAFT COMPLAINT FOR SETTLEMENT PURPOSES ONLY

10. The cashier began to ring up the sports drinks, and Plaintiff Montoya attempted to pay for the items with an EBT card.
11. Simultaneously, Defendant Pacheco entered the Allsup's, and confronted Plaintiff Montoya in an aggressive manner.
12. Without any reason to believe Plaintiff Montoya had committed or was in the commission of a crime, Defendant Pacheco got in Plaintiff Montoya's face and grabbed Plaintiff Montoya's hand.
13. Defendant Pacheco attempted to force Plaintiff Montoya to exit Allsup's and demanded Plaintiff Montoya's driver's license.
14. Defendant Pacheco insulted Plaintiff Montoya by making a presumption that Plaintiff Montoya did not have a job and made fun of the fact that Plaintiff Montoya was attempting to purchase his items with an EBT card.
15. Plaintiff Montoya feeling threatened asked if he could speak to another officer.
16. Because Plaintiff Montoya was frightened, when Defendant Pacheco refused this request and continued his aggressive behavior, Plaintiff Montoya voluntarily exited the Allsup's and placed a phone call to 911 in attempt to secure assistance for his safety.
17. While on the phone with 911, Plaintiff Montoya expressed his fear of physical harm due to Defendant Pacheco's overly aggressive behavior. During that call with the 911 operator, Defendant Pacheco took aim with his service issued taser at Plaintiff Montoya's back and discharged the weapon striking Plaintiff Montoya, whom was still holding his puppy, in his lower back and caused him to seize and violently fall to the pavement.

DRAFT COMPLAINT FOR SETTLEMENT PURPOSES ONLY

- 18.** At this point, Plaintiff Montoya could no longer be heard on the 911 call recording.
- 19.** Upon information and belief, Defendant Pacheco deployed multiple five second taser cycles upon Mr. Montoya despite the facts that Mr. Montoya was already incapacitated and had a puppy on his person.
- 20.** While on the pavement Defendant Pacheco handcuffed Plaintiff Montoya, verbally emasculated him, and suggested that his treatment of Plaintiff Montoya was a “good thing” for Plaintiff Montoya.
- 21.** Defendant Pacheco arrested Plaintiff Montoya for disorderly conduct and initiated a prosecution against him.
- 22.** On or about February 3, 2014, the Espanola City Attorney dismissed the case against Plaintiff Montoya.
- 23.** At no time during the above-described events did Plaintiff Montoya pose a threat to Defendant Pacheco or any other person.
- 24.** As a direct and proximate result of the Defendant Pacheco’s conduct set out above, Plaintiff Montoya has suffered serious physical and psychological injuries, mental distress, fear, anxiety, emotional suffering, and medical expenses, past and future. Plaintiff Montoya is entitled to compensatory damages for the above-described injuries.
- 25.** Defendant Pacheco acted in bad faith, willfully, knowingly and purposefully with the specific intent to deprive plaintiff of his constitutional rights and further acted recklessly, wantonly, and oppressively. As a result of the nature of Defendant Officers’ conduct, Plaintiff is entitled to punitive damages.

DRAFT COMPLAINT FOR SETTLEMENT PURPOSES ONLY**FEDERAL CONSTITUTIONAL CLAIMS****COUNT I – FOURTH AMENDMENT CLAIM (EXCESSIVE FORCE)**

26. Plaintiff incorporates the preceding paragraphs as if stated herein.
27. Plaintiff has and had a Fourth Amendment right to be free from excessive force.
28. The amount of force used to effectuate the seizure of Plaintiff was unreasonable and excessive under law.
29. Defendant Pacheco violated Plaintiff's Fourth Amendment right not to be subjected to excessive force.

COUNT II – FOURTH AMENDMENT CLAIM (UNREASONABLE SEIZURE)

30. Plaintiff incorporates the preceding paragraphs as if stated herein.
31. Plaintiff has and had a Fourth Amendment right to be free from unreasonable seizures of his person.
32. Defendant Pacheco deprived Plaintiff of his Fourth Amendment right to be free from unreasonable seizures when, with no reasonable belief that Plaintiff had committed a crime, the arrested and brutalized Plaintiff.
33. The seizure was wrongful, unreasonable, and deprived Plaintiff of his Fourth Amendment right to be free of unreasonable seizures.

COUNT III- FOURTH AMENDMENT CLAIM (FALSE IMPRISONMENT)

34. Plaintiff incorporates the preceding paragraphs as if stated herein.
35. Plaintiff has and had a Fourth Amendment right to be free of unjustified imprisonment.
36. Defendant Pacheco detained and arrested Plaintiff without reasonable suspicion or probable cause to believe that he was engaging in criminal activity or that he was

DRAFT COMPLAINT FOR SETTLEMENT PURPOSES ONLY

armed and dangerous and deprived Plaintiff of his Fourth Amendment right to be free of false imprisonment.

COUNT IV – FOURTH & FOURTEENTH AMENDMENT CLAIMS
(SUPERVISORY LIABILITY)

37. Plaintiff incorporates the preceding paragraphs as if stated herein.
38. The City of Espanola is responsible for the operations, customs, policies, and practices of EPD.
39. At all times relevant to this Complaint, the Fourth Amendment prevented the City of Espanola and its employees from using excessive force, unreasonable seizures, and false imprisonment.
40. The City of Espanola's failure to adequately hire, train and supervise its employees to institute and enforce adequate procedures and regulations against such conduct such as that complained of herein, constitutes violations of Plaintiff's Fourth Amendment and Fourteenth Amendment rights.
41. The City of Espanola owed Plaintiff an affirmative duty to keep Plaintiff free from the violations of the Fourth Amendment described herein,
42. The City of Espanola's failures to act was so culpable as to constitute acquiescence in the unlawful conduct of Defendant Pacheco, in violation of the Fourth Amendment and Fourteenth Amendments.
43. Defendant Pacheco's wrongful acts and failures to act proximately caused Plaintiff damages. These damages include physical injury, physical pain and suffering, invasion of bodily integrity, and severe psychological and emotional distress

DRAFT COMPLAINT FOR SETTLEMENT PURPOSES ONLY

NEW MEXICO TORT CLAIMS AGAINST THE DEFENDANTS**COUNT V – BATTERY**

44. Plaintiff incorporates the preceding paragraphs as if stated herein.
45. Defendant Pacheco battered Plaintiff by grabbing, tasing, and brutalizing Plaintiff with excessive force.
46. Defendant Pacheco's actions constituted a criminal act under the laws of the State of New Mexico.
47. This use of force was excessive and unnecessary as the Defendant Pacheco had no reasonable belief that Plaintiff had committed a crime or was armed or dangerous.
48. Defendant Officer Pacheco's actions constituted assault and battery for which immunity has been waived by NMSA 1978, § 41-4-12 (1997) and for which the City is liable under the doctrine of *respondeat superior*.

COUNT VI – FALSE IMPRISONMENT

49. Plaintiff incorporates the preceding paragraphs as if stated herein
50. Defendant Pacheco discharged his taser, brutalized, and handcuffed Plaintiff Montoya.
51. This detention was not justified or privileged under state law and constituted false imprisonment for which immunity has been waived by NMSA 1978, § 41-4-12 (1997).
52. Defendant Officer Pacheco's actions constituted false imprisonment for which immunity has been waived by NMSA 1978, § 41-4-12 (1997) and for which the City is liable under the doctrine of *respondeat superior*.

DRAFT COMPLAINT FOR SETTLEMENT PURPOSES ONLY

NEW MEXICO CONSTITUTIONAL CLAIMS

53. The State Constitution's protections against warrantless searches and seizures have been interpreted more expansively than those of the Fourth Amendment. *State v. Gomez*, 122 N.M. 777, 784 932 P.2d 1, 9 (1997).

COUNT VII - N.M. CONST. ART. II, § 10 (EXCESSIVE FORCE)

54. Plaintiff incorporates the preceding paragraphs as if stated herein.
55. Plaintiff has and had a right under N.M. Const. art II, § 10 to be free from excessive force.
56. The amount of force used to effectuate the seizure of Plaintiff was unreasonable and excessive under law.
57. Defendant Officer Pacheco violated Plaintiff's right under the New Mexico Constitution not to be subjected to excessive force.

RELIEF REQUESTED

WHEREFORE, Plaintiffs pray for a judgment against the defendants as follows:

1. Awarding damages, jointly and severally against all defendants, in an amount that the jury determines sufficient to compensate Plaintiffs for the constitutional deprivations inflicted by Defendant Pacheco and the corresponding damages that flow from those violations;
2. Awarding damages against the defendants in an amount that the jury determines sufficient to compensate Plaintiffs for Defendant's tortious conduct;
3. Awarding punitive damages against the defendants in an amount the jury determines is sufficient to deter the Defendant Pacheco and other law

DRAFT COMPLAINT FOR SETTLEMENT PURPOSES ONLY

enforcement officers from acting in a reckless and callous disregard of, or indifference to, the rights and safety of Plaintiffs and others;

4. Awarding reasonable costs and attorneys' fees incurred in bringing this action pursuant to 42 U.S.C. § 1988, to be paid by the Defendant Pacheco and the City; and
5. Granting such other relief as the court deems just and proper.

Dated: _____.

Respectfully Submitted:

Leon Howard
The Law Office of Lucero and Howard, LLC
PO Box 25391
Albuquerque, New Mexico 87125
Phone: (505) 225-8778
Fax: (505) 288-347

Joachim Marjon
Marjon Law, P.C.
311 Montezuma Ave
Santa Fe, NM 87501
Phone: (505) 954-1219
Fax: (505) 984-1110

Attorneys for Plaintiff

received
4/7/14 4:22 PM

April 2, 2014

Mr. Mario R. Martinez
P.O. Box 217
Tierra Amarilla, N.M. 87575

Ms. Tessa Mascareñas
Espanola city, Clerk
405 North Paseo De Oñate
Espanola, N.M. 87532

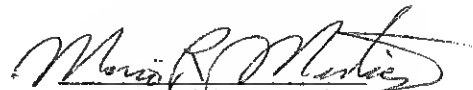
TORT CLAIM

RE; Intent to File Court action, due to an wrongful and unlawful arrest with unfounded reasons and cause. On one Mario R Martinez, in the Vicinity of North McCurdy Road, Milagro Trailer Park on the evening of Sunday, September 2nd, 2012. By Espanola City Police Officer, Jose Talache. Case # D-0117-CR-2013. Filed in the District Court, sitting for the County of Rio Arriba.

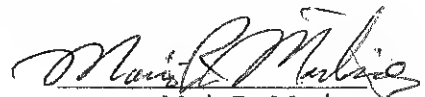
GREETINGS; Ms. Tessa Mascareñas, this letter is to inform you of the aforementioned and of the following, THAT; Mr. Jose Talache, an Officer of The Espanola City Police Department, arrested and accused Mr. Mario R. Martinez, on the evening of September 2nd, 2012, with Felony criminal charges, His conduct of business is solely based on theory, conjecture and on the word of a drunk neighbor of the Trailer Park. This conduct By Mr. Jose Talache clearly establishes a direct violation of Mario Martinez civil Rights. Wherefore unbecoming the ethics and proper edict of an officer of the Law.

Persons responsible for this cause of action, First and foremost, is Jose Talache, who in a rude and insolent manner, with no ethics, and with total lack of professionalism, complete disregard for the integrity of the City of Espanola's public relations and respect, accused, Arrested and overcharged Mr. Mario Martinez, with Felony Crimes causing permanent damages to his career and possibility of retirement. Mr. Mario Martinez has received severe punitive damages due to this false charges. Mr. Martinez now faces Homelessness, and economic stress.

Respectfully yours ;


Mario R. Martinez

I certify that on this 4th, Day of April 2014, a copy of this Letter and Claim Action were mailed to the address above and parties aforementioned of and to this cause of action.


Mario R. Martinez

**State of New Mexico
City of Española
In The Municipal Court**

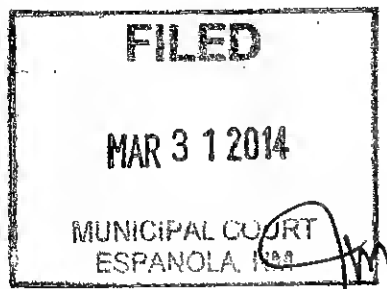
City of Española

Vs.

CHACON, PHILLIP
D.o.b. 07/28/1981
Defendant

CHACON, PHILLIP
PO BOX 2452
ESPANOLA NM 87532

Case No. 2014000449



FINAL ORDER ON CRIMINAL COMPLAINT

The defendant appeared: ☐ with an attorney ☒ pro se ☐ waiver signed

Violations	Plea*	Jail Time	Disposition Date	Judgment	Violation Amount
DISPLAY OF CURRENT VALID	G	0.00	03/31/2014	GUILTY	100.00
TAILLAMPS REQUIRED	G	0.00	03/31/2014	GUILTY	100.00
FAILURE TO COMPLY/PAY/APPEAR	G	0.00	03/31/2014	GUILTY	79.00
		0.00	00/00/0000		0.00
		0.00	00/00/0000		0.00
		0.00	00/00/0000		0.00
		0.00	00/00/0000		0.00
TOTAL FINES, COURT COSTS, AND FEES					0.00

1. PLEA* NC: No Contest NG: Not Guilty G: Guilty PA: Penalty Assessment

2. SENTENCE OF COURT

IT IS THE SENTENCE of this Court that the defendant pay fines, court costs, and/or fees to the Española Municipal Court in the sum of \$279.00 as shown above. A payment will be due on or before 00/00/0000. Failure to comply, report, or pay costs or fines will result in a contempt of court and/or bench warrant being issued. If you pled not guilty and were found guilty, you may appeal to the First Judicial District Court in Santa Fe, New Mexico by filing a Notice of Appeal within fifteen (15) days from the date of the entry of this judgment.

IT IS ORDERED THAT the defendant complete the following:

\$279.00 PAID IN FULL ON 03/31/14

CLEARANCES ISSUED

CASE CLOSED

IT IS FURTHER ORDERED that the defendant's cash bond be:

- ☐ returned to defendant
☐ applied to the payment of court costs, court fees and fines

March 31, 2014
Date


Municipal Judge Stephen S. Salazar /JWM

March 7, 2014

Mayor Alice Lucero
City of Espanola
405 North Paseo de Oñate
Espanola, New Mexico 87532

Subject: Tort Claims Act Notice

Dear Mayor Lucero,

I am giving notice based on the Tort Claims Act, that I make claim against the City of Espanola, New Mexico and the Espanola Police Department, especially officer Eric Gallant and other officers or employees of the City and all supervisors responsible for the hiring, supervision and training of said officers and employees, for the use of excessive force resulting in serious injuries; violation of my civil and constitutional rights; and other torts and wrongs, arising from an incident occurring on January 17, 2014 when I was attacked and arrested in the City near Railroad Avenue at approximately 8 o'clock in the morning.

Very truly yours,



Ronnie Griego
PO Box 203
Velarde, NM 87582
753-6431

By hand-delivery

Date: 3/10/2014

To: Eric Garcia, Public Safety Chief, Espanola Police Department
To: Salomon Romero, Detective, Espanola Police Department
To: Joe Duran, Interim City Manager, City of Espanola
To: Alice Lucero, Mayor, City of Espanola
To: Mary Griego, Director of Espanola Rio Arriba 911 Dispatch Center



Under the New Mexico Public Information's Act, I hereby request to review, examine and obtain copies of police reports, police transmissions to include lapel/hand-held audio recordings, and police cam video, police records check, police dispatch radio logs, recorded 911 radio communications involving police officers with the Espanola Police Department, regarding my person, namely: Phillip Chacon, specifically on the following dates and times: 3/9/2014 @ 3:00 pm. As per New Mexico Law, you have 7 days to respond to my written request. I am requesting complete governmental transparency without malevolent destruction and/or concealment of public records. I am willing to pay a reasonable fee for the reproduction of the aforementioned public records made under this legal request.

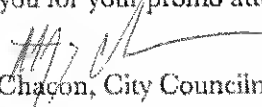
It should be noted that I am an Espanola City Councilor, namely District 2, and during my campaign I had observed and noticed serious public safety issues that have been brought to the attention of the public as well as the local news media. I am now being followed, stalked, stopped and harassed by members of the Espanola Police Department for no lawful or legal reason(s).

I requested State Police be used due to conflict of interest. However, Chief Garcia felt that Espanola City Police should investigate. After being arrested, I was sent to the Espanola Police Department and then transported to the Rio Arriba County Detention Center in Tierra Amarilla. After speaking with Rio Arriba County Sheriff's office, they were surprised how quickly I was transported knowing that I was going to be bonded out.

I intend to pursue civil action against the City of Espanola, the Espanola Police Department, the Chief of Police, the Mayor of Espanola and several of its police officers to include Officer Richard Gallegos and his biological son, Officer Jason Gallegos, for severe breaches of my US Constitutional Rights, specifically the first amendment (freedom of speech) and the fourth amendment (right to be free of unreasonable search and seizure).

Please consider this correspondence a legal tort claims notice.

Thank you for your prompt attention in this matter.


Phillip Chacon, City Councilman, District 2, City of Espanola
CC: New Mexico Attorney General's Office

Date: 03/03/2014

received
3/3/14 12:09 PM [Signature]

To: Eric Garcia, Chief of Police

To: Joe Duran, Interim City Manager

To: Alice Lucero, Mayor City of Espanola

To: Marty Griego, Director of Espanola/Rio Arriba 911 Dispatch Center.

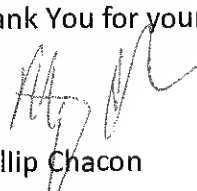
Under the New Mexico Public Information's Act, I here-by request to review, examine and obtain copies of police reports, police transmissions to include lapel/hand-held audio recordings, and police cam-video, police records check, police dispatch radio logs, recorded 911 radio communications involving police offices with the Espanola Police Department, regarding my person, namely: Mr. Phillip Chacon, specifically on the following dates and times: 2/26/14 @ 5:00PM 3/3/14 @ 7:30AM. As per New Mexico Law, you have 7 days to respond to my written request. I am requesting complete governmental transparency without malevolent destruction and or concealment of public records. I am willing to pay a reasonable fee for the reproduction of the aforementioned public records made under this legal request.

It should be noted that I' am running for a position on the Espanola City Council, namely District 2, and during my campaign I have observed and noticed serious public safety issues that have been brought to the attention of the public as well as the local news media. I am now being followed, stalked, stopped and harassed by members of the Espanola Police Department for no lawful or legal reason(s).

I intend to pursue civil action against the City of Espanola, The Espanola Police Department, the Chief of Police, the Mayor of Espanola and several of its police officers to include Officer Richard Gallegos and his biological son Officer Jason Gallegos for severe breaches of my US Constitutional Rights, specifically the first amendment; The freedom of speech, and the fourth amendment; The right to be free of unreasonable search and seizure.

Please consider this correspondence a legal tort claims notice.

Thank You for your prompt attention in this matter.


Phillip Chacon

Cc: New Mexico Attorney General's Office

State OF New Mexico
IN THE MUNICIPAL COURT
CITY OF ESPANOLA
COUNTY OF RIO ARriba
City Police: Greg Esparza
409 N. Paseo De Oñate
Española NM. 87532

To Whom it May Concern:

I Jennifer Ortega am writing this tort claim letter against officer Greg Esparza patrolman EPD#11,

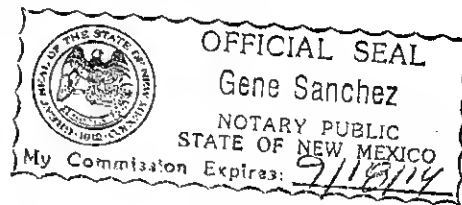
Because on November 27, 2013 about 1:45pm me and two of my kids were going to the store when officer Greg Esparza saw me driving at the four way stop on fairview Lane and McCurdy Road. Which at time he saw the truck and saw that it was me at turned his lights on and parked right in front of me pointing the gun at me and ordered me to put the truck in park and turn it off and take my seatbelt off and get on all fours in the middle of the highway and I was so scared it took me a little bit of time to do what he ordered and he got closer and put the to my head and yelled at me to get on the ground on my stomach and spread on all fours at this time im very frightened of him cuz he told me "if you didn't have your damn kids I would have shot you" you fuck in bitch" Then I asked what was the problem or what and he said just shut the fuck up you know what you fuck in did you stupid fuck in bitch. I'm gonna get you this time for making me look like a liar at magistrate court so now im going to fuck you over in Municipal Court. This is the third time I asked what in the hell is going on here he just grabbed the hand cuffs from another officer that drove up he stepped or got on his knees and was pushing down on my back as he was arresting me. He threw me in his unit or suv whatever you want to call and he said to me "I got you this time BITCH". At this point a woman from the church named Espanola Valley Seventh Day Adventist Church and her name is Carmen Payne stopped to ask if she could take the kids that they didn't need to see all that because she thought I was dead in the middle of the road faced down wards! Officer Esparza told her "get the fuck away from here, you fuck in old lady or ill take you to jail too because this bitch is going to pay for making a fool of me in Magistrate Court. At this point my cousin also stopped to see what was going on because she recognized my tuck and thought I was also dead because I was was on the ground on all fours face down still, she my cousin asked him if she could take the kids because she was relative, so he asked her for an ID and then told her to go ahead and hurry up and take the kids before I change my mind and just call Protective Services instead. Officer Trujillo showed up and asked him "isn't this the lady that you said made you look like an idiot at the magistrate court on your day off, and replied yeah but I got her stupid ass this time because I'm going to send it through Municipal Court, this time because she already won me twice in magistrate court, and this time the DA caught me lying and she can go after me for that but this Bitch isn't that smart. At this point my special needs daughter was scared and crying telling officer Esparza why are you doing this to my mom its almost thanksgiving and she didn't do anything wrong. He replied shut the fuck up because she's going to jail and so will you or you will go with protective services where your better off so you don't end up like your stupid mother in jail! As I'm sitting in the backseat of the policeman's Ford Edge I'm observing my truck being searched and towed for no reason

and with no consent. At this point he's parked behind city hall to get a case number right away, while awaiting for that he started looking for the card that has your rights on it and started reading it to me and asked if I wanted to take a drug test because he assumed I was drunk, or had been drinking and I'm not a big fan of drinking. I replied. At this point we are on our way to Espanola Hospital and he asked what else have you been taking or have taken you dumb bitch because you are all fucked up. I said to him what do you mean I'm a young person with Post Stress Dramatic Disorder and take medications to cope with daily life and have been on the same medications for several years now you would think that I'd be used to it. We got to the hospital and he yanked me out of the SUV he was driving and I would walk a bit fast and he'd jerk/pull me back and tell me don't walk so fast damn it or I'm not going to waste my time taking you fuckin bitch anyways your all fucked up and I'll say your acting crazy and resisting and you probably only have weed like the first time you dumb ass, every other word was F this and F that. He jerked me around and said lets go so he threw me back into the ford edge(SUV) and on the way back to the detention center he said I'm going to throw the book and get you this time for what I can so you can't get out so fast, I'm going to make sure you have a high bond and do spend Thanksgiving behind bars where you belong but if you weren't such a fuckin bitch I would have just given you tickets but since I can't get to your dad I'll pay it with his kids instead. Now I'm starting to have nightmares and I go to see Dr. Lang the Psychologist two or three sometimes four times a week, or an emergency phone call session because my nightmares are of him threatening to shoot me like he's told me, and every time I hear sirens and I think right away that it's him coming to taser me or shoot me, or accuse me of something that is not true so until this day I'm afraid of the police officers. I thought they were suppose to serve and protect our community not hurt us.

My Daughter Makayla wanted to write her own letter of complaint of what happened on November 27, 2013 at about 1:45, Here is what she wrote I was crying for my mom Jennifer Ortega when Officer Greg Esparza pointed the gun at my mom and told her to get down on the floor and he put his foot on her back until officer Trujillo showed up and he grabbed the handcuffs from him. Trujillo then came and asked me what the fuck is wrong with you," why are you crying like if someone died." I told him just leave me alone, and he said if you don't stop your attitude, crying and yelling I'm going to arrest you too. I tried to tell him I wasn't giving him attitude I was just crying for my mom. Officer Trujillo left and Greg Esparza told me to shut up and quit crying like a baby, I told him just leave me alone and let us go with Carmen Payne. Carmen Payne is the elderly lady my daughter called to pick them up and take them home to their dad so Officer Greg Esparza don't call Protective Services because he said if you don't find anybody to pick you up right away. And so I was trying to remember who I Could call because he wouldn't let me talk to my mom because she was in his car in the back seat. I was on the phone talking to another Lady Named Diane Cordova, she's also from the Seventh Day Adventist Church Greg was asking my little brother questions and I told my little brother not to answer him anything, and then he got my mom's purse and started looking through it and I pulled it from him and told him he didn't have permission to look in my moms purse or truck because she didn't do anything wrong you just blocked us and scared us by yelling and pointing the gun at us or my mom whomever you were pointing it at. He got all But torn about it and just told us we were just going to get taken away fuck it. I told him you cant do that because I'll make sure you lose your job because you have no right treating people like this especially someone like me that's special needs and only 15 years old and my brother is only 10 years old

and we are very traumatized again because this is the third damn time you have done this to my mom and us and we are going to make sure this will be the last time. He gave me a dirty look and said we'll see because I think I have her good this time for making me look stupid in court twice and I told him whatever we'll see because we aren't letting you get away with this. At this point one of my mom's cousin stopped and asked him what was going on because we were her cousins and if she could take us home to my dad and he yelled at her none of your fuckin business just give me your ID so you can get these fuckin cry babys away from here so she gave it to him and he threw it back at her and told her to hurry up and take them before he changes his mind and just call Protective Services on this dumb Bitch.

Jennifer Ortega
Signed
Jennifer Ortega
Name (Print)
P.O. Box 2512
Address (Print)
ESPAÑOLA N.M. 87532
City, State and Zip Code (Print)
505-204-3350
Telephone Number



received
9:39pm 2/3/14

Rudy Martín
Attorney at Law, P.C.

Rudy Martín
Attorney

January 26, 2014

Mayor Alice Lucero
City of Espanola
405 North Paseo de Oate
Espanola, New Mexico 87532

Re: Tort Claim Notice

Dear Mayor Lucero,

On behalf of Matthew Chavez, pursuant to the New Mexico Tort Claims Act, I am giving you and the City of Espanola notice that Mr. Chavez may be filing a lawsuit against the City and specifically Detective Solomon Romero and other police officers who were involved in the arrest of Mr. Chavez on October 28, 2013.

During that arrest, Mr. Chavez attempted to flee to avoid being arrested. At the time that he was apprehended, he was hit in the face by one of the officers believed to be Detective Romero with a flash light, causing a fracture of the cheek bone and nose. It is Mr. Chavez' position that excessive force was used after he was apprehended and being struck with a flash light in the face subsequent to being apprehended was unnecessary.

Very truly yours,



Rudy Martín

320 Gold Ave, S.W., Suite 1127
Albuquerque, New Mexico 87102
(505) 247-3799 Phone/Fax
e-mail Rnuart1017@yahoo.com

FRED C. MARTINEZ

Attorney and Counselor at Law
900 Lomas Boulevard, NW
Albuquerque, New Mexico 87102
(505) 242-1310

Facsimile (505) 242-2112

Email: martinezfredc@gmail.com

7 January, 2014

VIA: US Certified Mail

Honorable Mayor Alice Alarid Lucero
City of Espanola
405 N. Paseo de Oñate
Espanola, New Mexico 87535

***Re: John A. Vigil, DOB: 26 July, 1959, SSN: XXX-XX-0485
Date of Incident 28 October, 2013***

Dear Honorable Mayor Lucero,

This letter is the Notice of Claim of Mr. John A. Vigil, pursuant to the Tort Claims Act § 41-4-1 NMSA 1978.

Mr. Vigil suffered bodily injury, battery, false imprisonment, false arrest, slander, defamation of character and deprivation of rights secured by the constitution and laws of the United States and of New Mexico caused by Espanola Police Department Officer Greg P. Esparza. Officer Esparza came upon Mr. Vigil at a minor traffic incident at the intersection of North Riverside Drive and Valley Drive, across from the Wal-Mart Shopping Center in the City of Espanola, Rio Arriba County, State of New Mexico on or about October 28, 2013 between the hours of 3:00 pm and 4:00 pm.

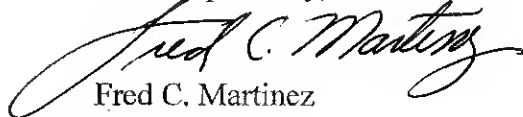
Mr. Vigil was arrested by Officer Esparza and during the arrest Officer Esparza aggressively and without reason twisted the right hand fourth finger (ring finger) after having

hand-cuffed Mr. Vigil behind his back, causing it to fracture. Due to this injury Mr. Vigil has been unable to perform his duties as a plumber to date. Mr. Vigil is still under doctor's care.

If you have any questions or concerns please contact me.

Thank you for your courtesies.

Most respectfully,


Fred C. Martinez
Attorney at Law

received
Thursday 1/9/14

December 10, 2013

Mayor Alice Lucero
City of Espanola
405 N. Paseo de Oate
Espanola, New Mexico 87532

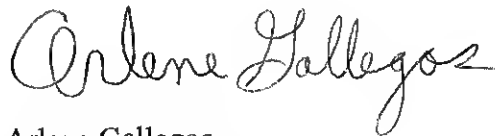
SUBJECT: Tort Claim Notice

Dear Mayor Lucero:

Please take note that I am making a Tort Claim against the City of Espanola, NM arising out of injuries I sustained on October 22, 2013 in The City's parking lot at City Hall when I stepped into a hole in the pavement which had been graveled over and fell. My mom was with me and helped me up. I was not able to walk, so she went in and reported the incident to Ms. Montoya at the front desk on October 22, 2013 at 2:05 p.m. then she drove me to the hospital emergency room. Later on that afternoon when my mom was taking pictures of the parking lot, Ms. Squires of your office was also informed of the incident.

I believe the City of Espanola was negligent in failure to properly maintain the parking lot.

Sincerely,

A handwritten signature in cursive script that reads "Arlene Gallegos".

Arlene Gallegos
1209 N. Orchard St.
Espanola, NM 87532
PHONE: (505)12-9850
or (505) 695- 6494 (message)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

T.J. and C.J., on behalf of their minor child B.J.

Plaintiffs,

v.

Case No. 12-CV-00565 RB/LFG

Danny Pacheco, et al.

Defendants.

AFFIDAVIT OF TESSA JO MASCARENAS

STATE OF NEW MEXICO)
)
COUNTY OF RIO ARRIBA)

Tessa Jo Mascarenas, being first duly sworn, states the following:


1. I am over eighteen years of age.
2. I am the City Clerk for the City of Espanola.
3. As the City Clerk for the City of Espanola, I regularly receive Tort Claims Notice sent to the City of Espanola. Pursuant to NMSA 1978, Section 41-4-16.
4. I have reviewed the City of Espanola's records, and I can verify that no Tort Claims Notice concerning the arrest of B.J. was ever filed.

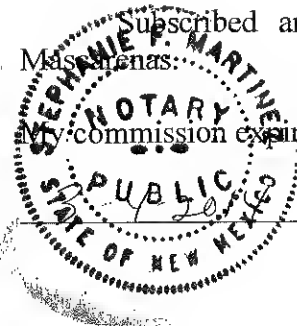
FURTHER AFFIANT SAYETH NOT.


Tessa Jo Mascarenas

Subscribed and sworn to before me this 25th of November, 2013, by Tessa Jo Mascarenas:

Notary Public
My commission expires:


Notary Public



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

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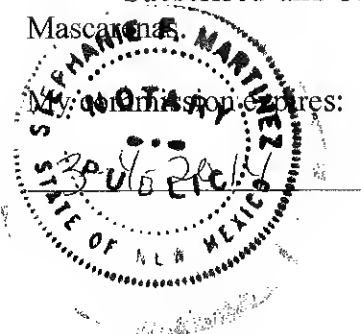
1. I am over eighteen years of age.
2. I am the City Clerk for the City of Espanola. I have held this position since April 2011.
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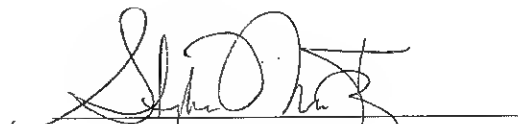
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Subscribed and sworn to before me this 25th of November, 2013, by Tessa Jo Mascarenas.

My commission expires:




Notary Public

ROTHSTEIN, DONATELLI, HUGHES, DAHLSTROM, SCHEIDENBURG & BIENVENU, LLP

ATTORNEYS AT LAW

MARK H. DONATELLI

505.988.8004

FAX: 505.982.0307

mhd@rothsteinlaw.com

October 11, 2013

VIA-FACSIMILE (505) 747-6084
and HAND-DELIVERY

The Honorable Alice Lucero
Mayor, City of Espanola
405 N. Paseo de Oate
Espanola, NM 87532

VIA-FACSIMILE (505) 747-6084
and HAND-DELIVERY

The Honorable Tessa Jo Mascarenas
City Clerk, City of Espanola
405 N. Paseo de Oate
Espanola, NM 87532

VIA-FACSIMILE (505) 747-6084
and HAND-DELIVERY

Eric Garcia
Public Safety Director/Chief of Police
City of Espanola
405 N. Paseo de Oate
Espanola, NM 87532

Re: Claims Arising from the Assault, Battery, Wrongful Arrest, and Personal Injuries of Stella and Emilio Randall on July 17, 2013.

To Whom It May Concern:

This firm has been retained to represent Stella and Emilio Randall arising from the assault, battery, wrongful arrest, and personal injuries sustained by Stella and Emilio Randall on July 17, 2013, by City of Espanola Police Officer's Greg Esparza, Dustin Chavez, Richard Trujillo, and Solomon Romero. As well as any other participating law enforcement officers.

The purpose of this letter is to give notice, under the New Mexico Tort Claims Act, § 41-4-16(A) NMSA 1978, of claims against the City of Espanola; City of Espanola Police Department; Public Safety Director/Police Chief Eric Garcia; City of Espanola Police Department Officer's Greg Esparza; Dustin Chavez; Richard Trujillo; and Solomon Romero; as well as other yet to be identified officers, employees, and officials of the City of Espanola, and the City of Espanola Police Department. These claims arise under various provisions of the New Mexico Tort Claims Act, including § 41-4-12 and § 41-4-6 NMSA 1978.

Based on our preliminary investigation and understanding of the facts, Mr. Emilio Randall and Mrs. Stella Randall have claims against the City of Espanola and the above

The Honorable Alice Lucero
The Honorable Tessa Jo Mascarenas
Public Safety Director/Chief Eric Garcia
Page 2

described officers under NMSA 1978, § 41-4-12 and other applicable provisions of the New Mexico Tort Claims Act. The Claimants have suffered physical and emotional damages and may pursue legal action against the City of Espanola.

It is anticipated that claims for personal injuries will be presented against the City of Espanola, the Espanola Police Department, Public Safety Director/Chief Eric Garcia, City of Espanola Police Officer's Greg Esparza, Dustin Chavez, Richard Trujillo, Solomon Romero, and other City officers, supervisors, and employees for their role in this tragic incident, and for the formulation and implementation of the policies and procedures in question, as well as supervisory liability. Claims may also be presented against the City of Espanola for vicarious liability.

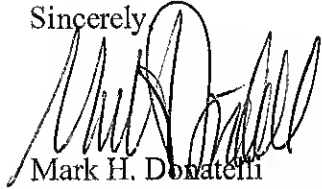
In summary, on Wednesday July 17, 2013, at or about 12:30 p.m., Emilio Randall went over to check on his son Lucas Randall at their Santa Cruz, New Mexico, property where Lucas was residing in the family owned Mobile Home. Upon entering the home Emilio Randall found his son Lucas on the floor laying unresponsive and immediately called 911 to report the emergency at hand and request assistance. Emilio Randall then called his spouse, Stella Randall to advise her of the emergency and request her presence at the scene. Emergency personnel arrived and administered emergency medical assistance to Lucas Randall. Espanola Police Officers described above also arrived at the scene. By no actions, threats, or aggressive behavior on behalf of Emilio and Stella Randall, they later found themselves being assaulted and battered, spat on, hand-cuffed, (Emilio Randall being hit by an officer's Taser between two and three times), wrongfully arrested, and hauled off to jail as their son died a tragic death in their immediate presence.

These claims, under the New Mexico Tort Claims Act, for damages for personal injury, bodily injury, mental distress, pain and suffering, medical expenses, economic damages, hedonic damages, and loss of enjoyment of life may include claims of assault, battery, false arrest, and deprivation of rights and privileges, or immunities secured by the Constitution of the United States and the State of New Mexico.

If you would like to discuss any aspect of this claim, or feel you need additional information, please feel free to contact the undersigned. Thank you for your cooperation.

The Honorable Alice Lucero
The Honorable Tessa Jo Mascarenas
Public Safety Director/Chief Eric Garcia
Page 3

Sincerely

A handwritten signature in black ink, appearing to read "Mark H. Donatelli". The signature is stylized with a large, looped initial "M" and a long, sweeping underline.

Mark H. Donatelli
Morgan E. Honeycutt
Attorneys at Law

MHD: ram

cc: Stella & Emilio Randall

MARK H. DONATELLI

505.988.8004
FAX: 505.982.0307
mhd@rothsteinlaw.com

October 11, 2013

VIA-FACSIMILE (505) 747-6084
and HAND-DELIVERY

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Mayor, City of Espanola
405 N. Paseo de Onate
Espanola, NM 87532

VIA-FACSIMILE (505) 747-6084
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The Honorable Tessa Jo Mascarenas
City Clerk, City of Espanola
405 N. Paseo de Onate
Espanola, NM 87532

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405 N. Paseo de Onate
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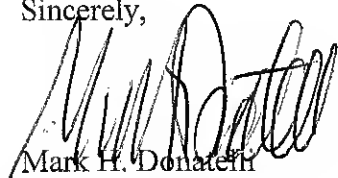
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The Honorable Tessa Jo Mascarenas
Public Safety Director/Chief Eric Garcia
Page 3

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Mark H. Donatelli
Morgan E. Honeycutt
Attorneys at Law

MHD: ram

cc: Stella & Emilio Randall



PRINCE, SCHMIDT, KORTE & BACA, LLP

ATTORNEYS AT LAW

2905 RODEO PARK DRIVE EAST, BUILDING 2
SANTA FE, NEW MEXICO 87505

TEL 505.982.5380 ♦ FAX 505.986.9176

LAS VEGAS OFFICE TEL 505.425.5511

BERTRAND B. PRINCE
1914-1998

STEPHEN G. SCHMIDT
KEVIN R. KORTE
D. MARIA SCHMIDT
VITALIA M. SENA-BACA

October 10, 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mayor Alice Lucero
City of Espanola
405 N. Paseo de Oñate
Espanola, NM 87532

Re: **Our Client:** Lloyd Ferran Jr.
 Loss Date: September 6, 2013

Dear Mayor Lucero:

I am writing pursuant to Section 41-4-16 NMSA 1978, on behalf of Lloyd Ferran Jr. This notice is submitted in relation to a traffic stop at gunpoint on September 6, 2013 at the Rio Chama Chevron Gas Station in Rio Arriba County. Lloyd Ferran's girlfriend Bridget Lara was the driver of Lloyd's vehicle during the stop. The incident involved Lloyd Ferran and an officer.

Lloyd Ferran Jr. suffered injuries and damages as a result of the incident.

I submit this letter to provide notice pursuant to the above referenced statute and to request that you confer with New Mexico State Police regarding preservation of documentation/evidence related to this incident. Please advise New Mexico State Police to keep/save/store/preserve whatever evidence or documentation which is in their possession which pertains to the above mentioned incident on the evening of September 6, 2013. This request includes but is not limited to:

1. Photographs/videotapes of the traffic stop and arrest of Lloyd Ferran (including officer dash video/audio recording and lapel footage/audio recording);
2. Rio Chama Chevron surveillance and video tapes of all footage on the evening of September 6, 2013;

Lloyd Ferran Jr., DOI: September 6, 2013
October 10, 2013
Page 2 of 2

3. Statements made by Lloyd Ferran and/or Bridget Lara on the evening of September 6, 2013.

Please contact Lloyd Ferran Jr. directly at 330 East 10th Street, Leadville, CO 80461, with written acknowledgment of this Tort Claim Notice along with the name, address and telephone number of the individual who will be handling this claim.

Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'V' followed by a horizontal line that extends to the right.

Vitalia Sena-Baca

cc: Lloyd Ferran Jr.

NOTICE OF CLAIM

Received
1/30/13
Jm

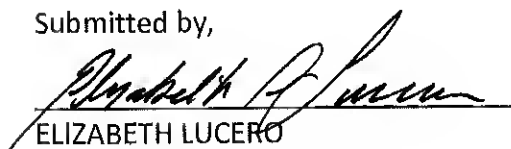
Comes now ELIZABETH LUCERO and give notice pursuant to the New Mexico Tort Claims Act that the afore mentioned person intends to file a claim against the CITY OF ESPANOLA and the New Mexico State Police for false arrest and infliction of emotional distress resulting from her public arrest.

The arrest was a result of a warrant issued for failure to appear for an offense that she did not commit. The date of birth and social security number of defendant were not that of the person who had the warrant issued for failure to appear and even though this information was readily available claimant was arrested in front of her grandchild, handcuffed and placed in the rear of a State Police patrol unit. She was transported to jail, she bailed out and appeared the next day before the Honorable Steven Salazar at which time Judge Salazar found that the wrong person was arrested and claimant was released from any criminal liability.

This event occurred on May 14, 2013 in the City of Espanola. The arrest was by the NMSP. The warrant information was either incorrectly entered or the officer was deliberately indifferent to the true identity of the claimant. The date of birth, social security number and name of claimant are different than the person for whom the warrant was issued.

This arrest and the outstanding warrant has effected claimant's ability to obtain employment for over four years during the time it has been outstanding and part of her background.

Submitted by,


ELIZABETH LUCERO

#42 County Road 127
Espanola, NM 87532


Daniel R. Marlowe

On behalf of Elizabeth Lucero

PO Box 8201
Santa Fe, NM 87504
(505) 988-1144

THE LAW OFFICE OF LUCERO AND HOWARD, LLC
20 FIRST PLAZA, SUITE 515
ALBUQUERQUE, NM 87102

WWW.LAWOFFICE-LH.COM

TELEPHONE
(505) 225-8778

FACSIMILE
(505) 288-3473

MAILING ADDRESS
PO BOX 25391
ALBUQUERQUE, NM 87125



CHRIS LUCERO
CHRIS@LAWOFFICE-LH.COM

LEON HOWARD
LEON@LAWOFFICE-LH.COM

June 13, 2013

SENT VIA FACSIMILE

Mayor Alice A. Lucero, City of Espanola
Attention: Risk Management
City of Espanola
405 N. Paseo de Oñate
Espanola, NM 87532

Fax: (505) 747-6084

Re: Tort Claims Act notice, Eppie Montoya

I write, pursuant to NMSA 1978, § 41-4-16 (1977), to notify you that our client, Eppie Montoya is considering pursuing state tort claims for Battery, Assault, False Imprisonment, Negligent Hiring, Negligent Supervision, Negligent Retention, Negligence, and Intentional Infliction of Emotional Distress against the Espanola Police Department, the City of Espanola, and any supervisors, staff, and other employees related to the incident described below.

On March 19, 2013, Eppie Montoya was attacked, tased and wrongfully arrested by Espanola Police Department Officers at 444 Riverside Drive, Espanola, NM. Based on information and belief this incident took place at some time around 2:00 p.m.

Thank you for your attention to this matter.

Sincerely,


Leon Howard
Attorney and Counselor at Law

Joachim Marjon, Esq
Marjon Law PC
311 Montezuma Ave
Santa Fe, NM 87501



THE LAW OFFICE OF LUCERO AND HOWARD, LLC

20 First Plaza, Suite 515
ALBUQUERQUE, NM 87102

WWW.LAWOFFICE-LH.COM

TELEPHONE
(505) 223-8778

FACSIMILE
(505) 288-3473

MAILING ADDRESS
PO BOX 25391
ALBUQUERQUE, NM 87125



CHRIS LUCERO
CHRIS@LAWOFFICE-LH.COM

LEON HOWARD
LEON@LAWOFFICE-LH.COM

FACSIMILE TRANSMISSION COVER SHEET

Transmitting 2 pages, including this cover page

TO: City Mayor Alice A. Lucero, City of Espanola

OFFICE: Risk Management

FAX #: (505) 747-6084

FROM: Leon Howard, Esq.

DATE: June 13, 2013

DOCUMENT(S) BEING TRANSMITTED: Tort Claims Notice

REGARDING: Eppie Montoya

MESSAGE:

cc: Joachim Marjon, Esq. - (505) 984-1110

THE HARD COPY OF THESE DOCUMENT(S) WILL FOLLOW BY:

☐ FIRST CLASS MAIL
☐ FEDERAL EXPRESS
☐ OTHER _____

☒ WILL NOT BE SENT

Re: Intent To Suit

March 11, 2012

ESPANOLA POLICE DEPARTMENT;

CITY OF ESPANOLA

Attn:

On this date of March 11, 2013, I give Official Notice to the CITY OF ESPANOLA AND ESEPANOLA POLICE DEPARTMENT of an OFFICIAL INTENT TO SUE FOR THE FALSE IMPRISONMENT, INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS, VIOLATIONS OF THE CRA, VIOLATIONS OF ETHICS/PROFESSIONAL CODES OF CONDUCT, PTSD, ILLEGAL ARREST, DISCRIMINATION, FRAUDULENT POLICE REPORT, BRIBES, CONSPIRACY, VIOLATIONS OF MEDICAL AND PROPOSED MENTAL AND SPIRITUAL HEALTH SERVICES, DENIAL OF MEDICATIONS, LOSS OF CONSORTIUM, POLICE MISCONDUDUCT, ATTEMPTED MURDER, SEX AND RACE DISCRIMINATION, BRIBES FROM NEIGHBORING TRIBES, SLANDER, LIBEL, MALICIOUSIOUS AND EGREGIOUS FALSEAND ILLEGALITES OF MY PERSON AND THE UNITED STATES CONSTITUTION, BYLAWS OF NM AND OTHER GUARANTEEEO DUE PROCESS OF THE LAW FOR THE FOLLOWING CAUSES:

9-10-2012; case number: M-43-fr-201200352

 Aspen Noelle

SUBJECT TO AMENDMENT (INTENT TO SUIT)

First notice of intent to sue. 0000

Certificate of Service

I have faxed the below addressed entities of the Intent to Sue THIS 11 day of Mar

20 13

City of Espanola

Attn: Alice Lucero ✓

405 South Paseo de onate

Espanola nm 87532

505-747-6084

Espanola chief of Police

Attn: Eric Garcia and then police of Chief on September 2012

Arresting officer (name unknown)

505-747-6059; 505-747-6089



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Fax Cover Sheet

Date 3/11/2013

Number of pages 3 (including cover page)

To: Espele PD

From: _____

Name City of Espele

Name Nelle Aspen

Company _____

Company _____

Telephone _____

Telephone _____

Fax 505-747-6089

Comments 505-747-6089

please deliver to Espele

PD Attn: Gavin



Fax - Local Send



Fax - Domestic Send



Fax - International Send

fedex.com 1.800.GoFedEx 1.800.463.3339

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22705

City Clerk of Espanola
Pasa Lo Mascareñas,

May 1, 2013

Notice of Tort Claim

On February 8th, 2013, at the Holding cells at the Espanola City Jail. I was being instigated by OFFICER Jose Talache, and OFFICER Marquez into them wanting to ASSAULT me.

Since that incident, And me being released From Jail, I have been harassed by other OFFICER in the Police Department.

Thank you, For your time & Consideration in this matter

Sincerely,
Michael Espinoza

Major: Alice Lucero, May 1, 2013

Notice of Tort Claim

On February 8th, 2013, at the Holding Cells at the Española City Jail. I was being instigated by Officer Jose Talache and Officer Marquez into them wanting to assault me.

Since that incident and me being released from Jail, I have been harassed by other officers in the Police Department.

Thank you, For your time & consideration in this matter.

Sincerely,
Michael Jopings

P.O. BOX 1670
Espanola, NM
87532
(505) 929-0914

April 15, 2013

To: Mayor Lucero, City of Espanola
From: Frankie Garduno
Subject: Tort Claims Notice

Dear Mayor Lucero,

Please take notice that I am providing you with this Tort Claims notice arising out of an incident that took place in Espanola, NM on March 12, 2013 at the Allsup's store located on Riverside Drive. Police officers Solomon Romero and other officers that have not yet been identified forcefully assaulted, battered, and also tasered me four times. I believe this violated my Federal and State Constitutional rights by using excessive force on me. I intend to pursue Legal remedies.

Sincerely,

Frankie Garduno



4/5/13 - Forwarded
to City Clerk
RECEIVED

4/2/2013

Iran Salazar
Guest House #54 State Road 581
Espanola, NM 87532

From: Iran Salazar

Risk Management/City Manager
City of Espanola
405 Paseo De Onate
Espanola, NM 87532

Police Department/Chief of Police
411 N. Paseo De Onate
Espanola, NM 87532

Subject: Misconduct of City of Espanola
Officer Solomon Romero

Ref.: Notice of Tort Claim, Iran Salazar, Misconduct

GREETINGS:

Pursuant to the New Mexico Tort Claims Act, NMSA 1978, §41-4-1 et. Seq., and any other applicable statute, ordinance or regulation, notice is hereby given you of a compensable claim for damages and the intent to file a lawsuit by Iran Salazar for damages suffered as a result of negligence or willful misconduct by a City of Espanola Police Employee Officer Romero and employee of City of Espanola.

On the morning of January 4, 2013 Officer Solomon Romero was conducting law enforcement outside of his jurisdiction, out of the city limits of Espanola, New Mexico. I, Iran Salazar, was in my kitchen, in my house preparing breakfast around approximately 10:30-11:00 a.m. for myself and some guests when Officer Solomon Romero violated my privacy by forcefully entering my house without knocking and most importantly without my permission. He asked "Who is Iran?" I then said "I am." He then identified himself as Detective Romero with the city of Espanola and notified me that I was a suspect for receiving stolen goods. I asked him if he had a warrant and he said no that he did not. I brought it to his attention that he was out of his jurisdiction and could not legally be on the premises without a search warrant and needed to follow proper protocol by being accompanied by a state Police Officer or a Rio Arriba County Sheriff.


I then advised Detective Romero that I do not, nor have I ever bought or received stolen goods but since he already barged into my home without my permission I would allow him to search my home anyways because I had nothing to hide. He completed his search throughout my residence but did not find any stolen merchandise he was accusing me of having possession of. He then started harassing me at the top of the stairs and assaulted me by pushing me down the stairway. After I fell down the stairs as a result of Detective Romero pushing me, I immediately informed him that he needed to leave my house at once. I reiterated that he was out of his jurisdiction and did not have legal bounds or a warrant to be here. At this point he became hostile and threatened to call back up and get a warrant for my arrest.

I believe I have been victimized by Officer Solomon Romero and my civil rights have been severely violated in this matter.

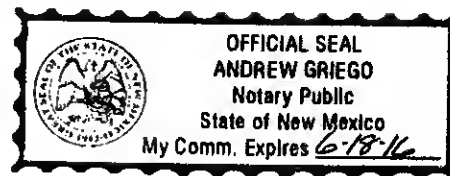
Iran Salazar  Date 4-3-13

Witness  Date 4/3/13

State of New Mexico
County of Santa Fe
On this 3rd
day of April, 2013
before me personally appeared Iran Salazar
to me known to be the person described in and who executed the
foregoing instrument and acknowledged that he/she executed the
same as his/her free act and deed, for the purposes therein set forth.


(Notary Public)

My Commission Expires: 6-18-16



DAVID FOSTER LAW FIRM, P.C.

P.O. Box 95102
Albuquerque, NM 87199
(505) 216-1502
(505) 212-0846 (fax)

150 Washington St., Suite 220
Santa Fe, NM 87501

Fosterlawfirm@gmail.com

1012 Lomas NW
Albuquerque, NM 87102

April 10, 2012

VIA HAND DELIVERY

Mayor Alice Lucero
405 Paseo de Oñate,
Española, NM 87532

received
4/10/12 [signature]

Dear Mayor Lucero:

This is to give notice that Christian Lopez, of the Espanola Police Department, 411 North Paseo De Oñate Espanola, NM 87532, intends to file a tort claim pursuant to NMSA Sec. 41-4-16.

Lt. Lopez has been discriminated and retaliated against by the former Chief of the Espanola Police Department, Leo Montoya, who has also broken an agreement reached between Chief Montoya and Lt. Lopez. Chief Montoya improperly handled an internal affairs investigation against Lt. Lopez, violated Lt. Lopez's rights, improperly acted at the behest of elected officials, and allowed elected officials to interfere in an internal affairs investigation.

On or about January 11, 2012, Lt. Lopez was placed on administrative leave by Montoya on the purported grounds of misconduct. Montoya did so after violating Lt. Lopez's rights under NMSA 29-14-4, the Peace Officers Employer-Employee Relations Act ("POEERA"), and after the confidentiality of personnel matters had been violated. Moreover, Montoya took such actions in violation of Espanola Police Department policies and procedures and after he made himself a witness in the matter. In light of the EPD's past harassment of Lt. Lopez, the actions of Montoya and apparent involvement by City Counselor Cory Lewis ("Lewis") and Mayor Alice Lucero ("Lucero") in this matter are improper retaliation against Lt. Lopez.

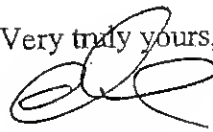
In addition to the retaliation, Lt. Lopez suffered from premature discipline by Chief Montoya and a disparity of treatment in how Chief Montoya handled the issue between Lt. Lopez and Deputy Martin Vigil ("Vigil"). Chief Montoya hastily and prematurely put Lt. Lopez on administrative leave and without just cause. The decision was completely unsupported by any objective facts and outside of past practices and progressive discipline. The only explanation for such action is retaliation and

harassment, something Lt. Lopez has endured in the past and for which has had to seek legal representation. Instead of supporting the commanders of the EPD, Chief Montoya appears to have caved in to political pressure and showed favoritism, violating Lt. Lopez's rights.

On or about January 23, 2012, an agreement was reached between the parties related to any disciplinary action against Lt. Lopez. The City of Espanola and the Police Department reneged on that agreement, causing Lt. Lopez to suffer harm to his reputation, undue stress and medical issues, and false information to be placed in his personnel file.

Chief Montoya and the City of Espanola's actions constitute harassment, retaliation, and defamation of character. The acts caused Lt. Lopez to suffer damages, led to the creation of a hostile work environment, violated his civil rights, constituted prima facie and other torts, and violated his rights secured under the Constitution and the laws of the United States and the State of New Mexico. The City was notified of the impropriety of Chief Montoya's acts, but did nothing, and has instead tolerated and accepted the Chief's actions against Lt. Lopez. Lt. Lopez has suffered injury and damages for which he holds each of you and your agencies responsible. You are hereby notified that Mr. Gehrmann intends to bring suit for damages for injuries pursuant to the New Mexico Tort Claims Act, the State Personnel Act, Human Rights Act, common law, and Title 42 U.S.C. 1983.

Very truly yours,

A handwritten signature in black ink, appearing to read 'David Foster', with a stylized, cursive flourish.

David Foster

Richard C. Civerolo
Lawrence H. Hill
Robert J. Curtis
Lisa Entress Pullen
Lance D. Richards
Megan Day Hill

Civerolo, Gralow, Hill & Curtis

A Professional Association
Counselors & Attorneys At Law

Justin L. Robbs
David M. Wesner
Jolanna C. Cox
Joseph W. Reichert

Of Counsel -
William P. Gralow
(Retired)

Special Counsel -
M. Clea Gutterson
Ellen M. Kelly

January 2, 2013

Alice A. Lucero, Mayor
City of Espanola
408 Paseo de Onate
Espanola, New Mexico 87532

Josephine Velasquez
Director Beatrice Martinez Senior Center
735 Vietnam Veterans' Road
Espanola, New Mexico 87532

Tracy Naranjo
Beatrice Martinez Senior Center
735 Vietnam Veterans' Road
Espanola, New Mexico 87532

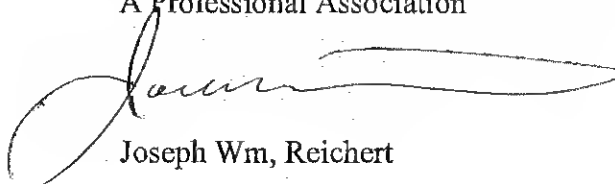
Re: *Anita Trujillo v. City of Espanola, et al.*
First Judicial District Court ~ County of Santa Fe
Cause No.: D-101-CV-2011-03269
Our File No.: 09999.050

Dear All:

Enclosed please find Defendants' Motion for Summary Judgment Based on Tort Claims Act Issues, which was sent to the Court on December 28, 2012.

Sincerely,

CIVEROLO, GRALOW, HILL & CURTIS
A Professional Association



Joseph Wm, Reichert

LHH/mc

Enclosure

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

ANITA TRUJILLO,

Plaintiff,

v.

D-101-CV-2011-03269

CITY OF ESPAÑOLA, and the
BEATRICE MARTINEZ SENIOR CENTER,
JOSEPHINE VELASQUEZ, and
TRACY NARANJO.

Defendants.

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT,
BASED UPON TORT CLAIMS ACT ISSUES

The Defendants in the above captioned cause, the City of Española (the "City"), the Beatrice Martinez Senior Center (the "Senior Center"), Josephine Velasquez, and Tracy Naranjo, through their attorney of record, Civerolo, Gralow, Hill, and Curtis P.A., by Lawrence Hill, Esq., respectfully moves this court for judgment in their favor, dismissing all claims asserted in this action by Plaintiff, Anita Trujillo. In support of this Motion, Defendants state as follows:

The materials submitted with this Motion demonstrate that there is no genuine issue of material fact to preclude judgment in favor of these Defendants, and they are entitled to judgment as a matter of law, pursuant to Rule 1-056 NMRA. The Defendants are given immunity from suit under the New Mexico Tort Claims Act, and the Act does not waive immunity for the causes of actions asserted by the Plaintiff.

STATEMENT OF MATERIAL FACTS

Plaintiff instituted this action on October 24, 2011, by filing her Complaint For Personal Injury Damages. In her Complaint, she alleges as follows:

1. The City of Española is an incorporated city in the State of New Mexico (Complaint, ¶ 1).

2. The Senior Center is a program sponsored and funded by the City. (Complaint, ¶ 2)

3. Josephine Velasquez is an employee of the City and director of the Senior Center. (Complaint, ¶ 3)

4. Tracy Naranjo is an employee of the City, and coordinator of the Senior Center. On the date Plaintiff alleges she was injured, October 26, 2009, Tracy Naranjo drove a van used to transport registered members of the Senior Center. Plaintiff was a passenger in that van. (Complaint, ¶ 4)

(For purposes of this motion only, Defendants will concede Plaintiff's allegations, as stated in the four preceding paragraphs, to be true.)

5. Plaintiff alleges she was injured through Tracy Naranjo's negligent operation of the van, the failure of the City to provide transportation in compliance with ADA requirements, the City's failure to maintain the van properly; failure of the van operator to provide plaintiff with assistance when disembarking from the van; failure by Tracy Naranjo to instruct her passengers to wait for her to come to the door to assist during the process; the unsupervised character of the disembarking process; the failure of the City, the Senior Center, Josephine Velasquez and Tracy Naranjo to properly train van

operators in assisting the elderly while disembarking; and failure of the City to provide or use a ramp with the vans. (**Complaint, ¶¶ 7-20**)

6. Defendants deposed Plaintiff on October 24, 2012. At her deposition, Trujillo testified that on August 8, 2005, she executed a document entitled "Liability Transportation Release Form"; (**Deposition of Anita Trujillo, (pertinent portions of which are attached , collectively, as Exhibit A hereto), p. 46, lns. 8-25; p. 47, lns. 1-5; Exhibit 2 to the Deposition of Anita Trujillo**) She signed this document on August 8, 2005; (**Exhibit A, p. 48, lns. 21-25; p. 49, lns. 1-9**)

7. The "Liability Transportation Release Form" reads as follows:

I THE UNDERSIGNED DO HEREBY RELEASE THE CITY OF ESPANOLA AND ITS EMPLOYEES AND THE SENIOR CENTER DEPARTMENT FROM ANY AND ALL LIABILITY FOR INJURY CLAIMS AND DEMANDS WHICH MAY ARISE OR RESULTS FROM MY PARTICIPATION DURING CITY FUNCTIONS OR FOR TRANSPORTATION TO DIFFERENT EVENTS ON THE CITY VEHICLES.

(Capitalization in original.)

8. Counsel for Defendants asked Trujillo "And you realize by signing it [the Liability Transportation Release Form] you were at least telling them that if you got injured in the van, you wouldn't sue them. Did you realize that's what you were telling them?" Trujillo agreed with this statement, answering "Right". (**Exhibit A, p. 49, lns. 10-14**)

9. On August 2, 2005, Trujillo filled out a document captioned "City of Espanola Senior Citizens Center Registration Form." (**Exhibit A, p. 49, lns. 15-25; p. 50, lns. 1-9;**

Exhibit 3 to Deposition of Anita Trujillo) In that document, Trujillo disclosed personal information, emergency contacts, medical information, and a listing of her interests and hobbies. She also represented that she suffered from no disabilities or handicaps. *Id.* At her deposition, she asserted that she had been free of handicaps until the accident which is the subject of her lawsuit. She testified that “after that, they gave me one [a handicap].” (Exhibit A, p. 50, Ins. 21 & 22)

10. Plaintiff testified that she was injured when she fell out of the van. On the day of the accident, her feet were numb, a condition she attributed to her diabetes. She held onto the latch on the door, when a lady pulled on the door. This pull caused her to fall out of the van to the ground. As she characterized it “I know this side hit the van, and the other side hit the sidewalk”. (Exhibit A, p. 22, Ins. 1-7)

11. Expanding upon this in a later part of her deposition, Plaintiff agreed that she fell from the van because “... when [I] reached for the latch on the door that opens, the door was opened.” She testified that the door was opened by a woman named Ramoncita Tafoya. (Exhibit A, p. 29, Ins 18-23) (From the context of Trujillo’s testimony, it appears that Ramoncita Tafoya was a fellow patron of the Seniors’ Center, and not an employee of the City.) Plaintiff was holding onto the door when someone opened it. (*Id.*, p. 31, Ins 5-7)

12. The van’s driver was Plaintiff’s friend, Defendant Tracy Naranjo. (Exhibit A, p. 22, Ins 23-25, p. 23, Ins 1-13) Plaintiff had been riding the van five days a week for 10 years. (*Id.*, p. 26, Ins 23-25) At the time of her accident, Plaintiff always entered and exited the van by herself, without assistance. (*Id.*, p. 28, Ins 12-24)

13. The accident was unexpected and unusual. Plaintiff testified that she did not

think Tracy could have done anything to prevent her accident. (Exhibit A, p. 32, lns 2-14) Plaintiff believed that the City did nothing wrong or negligent to cause her accident. She believes that the City should reimburse her for losses because "it was the city bus and property". (*Id.*, p. 36, lns 15-17) She does not blame Tracy for her fall. (*Id.*, p. 68, lns 4-6)

14. Plaintiff attributed her mishap to various omissions on the part of Tracy Naranjo and Josephine Velasquez. She offered the opinion that Josephine Velasquez should have "... Sen[t] them to classes to show them [drivers] how to load in and load the old people." When asked what Tracy should have done that she failed to do, Plaintiff responded "she didn't help the people at all". Plaintiff opined that Tracy should have behaved like the driver from Camel Rock, who "helps them get up, make sure that the step is high enough for you so you don't fall or slip, you know." (Exhibit A, p. 76, lns 9-23)

15. When examined by her own attorney, Plaintiff testified that Tracy "... just lets you go like a school kid to get down at your own risk". (Exhibit A, p. 84, lns 12-17) She believes that the driver should hold onto the door of the van as people exit. (*Id.*, p. 89, lns 17-20) In her view, a step, placed on the side of the van where the people enter and exit, should have been provided; this was the substance of her testimony, though that testimony was largely drawn out of her by her own attorney's leading questions. (*Id.*, p. 94, lns 19-21; *see generally* pp. 95 & 96)

16. At the time she was injured, Plaintiff was engaged in a recreational activity, as she was being transported to a bingo game. After departing from the van, after the time when she alleged she incurred her injury, she played bingo at the senior center for about

two hours. . (Exhibit A, p. 22, lns 9-15; p. 41, lns 13-22; p. 67, lns 2-6)

ARGUMENT

This Motion is one of two related motions. The defendants are requesting summary judgment in their favor for two distinct reasons: (1) Plaintiff executed a release in favor of the defendant City and its employees, which operates to relieve Defendants of liability for any injuries she may have sustained while exiting the city's van; and (2) the New Mexico Tort Claims Act does not waive governmental immunity for the specific acts of negligence and injurious omissions that Plaintiff alleges against these Defendants.

This motion addresses the second issue, presenting the defendants' argument that the Tort Claims Act has not waived immunity for the acts and omissions alleged by Plaintiff. The material facts are undisputed on this point, and only the legal interpretation of them remains; summary judgment in favor of the Defendants is therefore appropriate. Rule 1-056(C) NMRA; *Garrity v. Overland Sheepskin Co. of Taos*, 1996-NMSC-032, ¶ 29, 121 N.M. 710, 917 P.2d 1382. Whether the New Mexico Tort Claims Act bars Plaintiff's claims is a question of law. *See Rutherford v. Chaves County*, 2003-NMSC-010, ¶ 8, 133 N.M. 756, 69 P.3d 1199.

The City, its Senior Center, and its employees, Tracy Naranjo and Josephine Velasquez, are afforded immunity from suit under Section 41-4-4 of the Tort Claims Act. Part A of that Section grants "immunity from liability for any tort" to "... a governmental entity, and any public employee acting within the scope of duty." It further provides that this blanket of immunity protects them, except as waived by Sections 41-4-

5 through 41-4-12.

The Complaint makes specific reference to the defendants' alleged improper "operation" and "maintenance" of the van. (Complaint, ¶¶ 7- 20) These allegations relate directly to Section 41-4-5 of the Act, which provides that:

The immunity granted pursuant to Subsection A of Section 41-4-4 NMSA 1978 does not apply to liability for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of public employees while acting within the scope of their duties in the operation or maintenance of any motor vehicle, aircraft or watercraft.

The New Mexico Tort Claims Act is a legislative mechanism for establishment of sovereign immunity. The rule it establishes grants immunity to governmental entities, subject to specific stated exceptions. Immunity is the rule for governmental defendants; liability is the exception.

If there is any overriding public policy this court should take into account when deciding this motion, it is the policy articulated in Section 41-4-2 of the Tort Claims Act, captioned "Legislative Declaration". It states that:

- (A) ... the Legislature recognizes that while a private party may readily be liable for his torts within the chosen ambit of his activity, the area within which the government has the power to act for the public good is almost without limit, and therefore government should not have the duty to do everything that might be done.... It is declared to be the public policy of New Mexico that governmental entities and public employees shall only be liable within the limitations of the Tort Claims Act... and in accordance with the principles established in that act.

This legislative declaration concludes by stating that "(B) ... Determination of the standard of care required in any particular instance should be made with the knowledge that each governmental entity has financial limitations within which it must exercise authorized power and discretion in determining the extent and nature of its activities."

It is a fair summary of the legislative policy articulated by the Act to say that government immunity from suit is the rule, subject to definite and clearly articulated exceptions; and that protection of governmental finances is of paramount concern to the legislature, such that solicitude for the public treasury must even influence the standard of care required in any particular instance.

The language of the legislative declaration disfavors statutory construction that expands governmental liability by implication, or affords plaintiffs broad latitude to sue based on an expansive reading of the waivers contained in the Act. Giving the statutory terms "operation" and "maintenance" their plain meaning leaves Plaintiff without any actionable claims. None of the acts or omissions alleged in Plaintiff's complaint can fairly be said to amount to the "operation" or "maintenance" of the motor vehicle in which she was a passenger.

New Mexico case law favors the interpretation urged by Defendants. In *Owens v Leavitts Freight Service, Inc.*, 106 N.M. 512, 745 P.2d 1165 (Ct App 1987), the parents of an injured student sued the Transportation Division of the State Board of Education, the assistant state superintendent of transportation, the school district, the bus driver, and the bus company to recover for injuries to the student, who was struck while crossing a road to board a school bus. The trial court granted summary judgment in favor of the state defendants on sovereign immunity grounds. The Court of Appeals held that the

State's design, planning, and enforcement of safety rules for school bus transportation were not "operation of any motor vehicle" for which sovereign immunity had been waived under Section 41-4-5. It explained its decision by stating that "This court will not look beyond the plain meaning of the words of an unambiguous statute." (*Id* at 513, 745 P.2d at 1166)

The reasoning in *Owens* is decisive for this case, and demands that Defendants be given the benefit of the immunity afforded to them by the Tort Claims Act. *Owens* found that Section 41-4-5 intended the term "operation" to be understood in its plainest and most common sense, noting that

When a term is not defined by statute, this court will interpret that term in accordance with its usual and ordinary meaning, unless a different intent is clearly indicated. *Wellborn Paint Mfg. Co. v. New Mexico Employment Security Dept.*, 101 N.M. 534, 685 P.2d 389 (Ct.App.1984). The meaning of a statute is to be ascertained primarily from its terms. *Irvine v. St. Joseph Hosp., Inc.*, 102 N.M. 572, 698 P.2d 442 (Ct.App.1984).

Several out-of-state jurisdictions have defined the "operation of motor vehicles" as a physical operation involving "manipulation of a vehicle's controls to propel the vehicle," *Visintin v. Country Mutual Ins. Co.*, 78 Ill.App.2d 75, 222 N.E.2d 550 (1966); *Metcalf v. Hartford Accident & Indemnity Co.*, 176 Neb. 468, 126 N.W.2d 471 (1964); *Indemnity Ins. Co. of North America v. Metropolitan Casualty Ins. Co. of New York*, 33 N.J. 507, 166 A.2d 355 (1960); *State Farm Mutual Automobile Ins. Co. v. Allstate Ins. Co.*, 154 W.Va. 448, 175 S.E.2d 478 (1970), or "a personal act in working the mechanism" of the car, *Feitelberg v. Matuson*, 124 Misc. 595, 208 N.Y.S. 786 (1925); *Morrow v. Asher*, 55 F.2d 365 (N.D.Tex.1932), or in a car accident case, directing and controlling the car as a driver, *Maryland Casualty Co. v. Marshbank*, 226 F.2d 637 (3rd Cir.1955).

Still more applicable here, some jurisdictions have discussed the operation of school buses. In *McNees v. Scholley*, 46 Mich.App. 702, 208 N.W.2d 643 (1973), a child was hit by a car while standing on the opposite side of the road from the designated bus stop. The bus had not yet arrived. Plaintiffs argued that his injuries were the result of the defendant school

district's negligence in the operation of its school buses by designating an unsafe location as a bus stop and having its driver stop there. Plaintiffs claimed that the designation of a bus stop constituted the operation of a motor vehicle under a statute similar to New Mexico's Section 41-4-5. The court rejected this argument, stating that "operation" meant "the vehicle must be in a 'state of being at work' or 'in the active exercise of some specific function' by performing work or producing effects at the time and place the injury is inflicted." Id. 208 N.W.2d at 645.

(Id. at 514, 745 P.2d at 1167)

Under this standard, nothing alleged against these Defendants by Plaintiff can be characterized as amounting to, or arising out of the "operation" of the Senior Center van. Plaintiff makes no allegation that her injury was connected with the manner in which Tracy Naranjo directed and guided the van while it was in motion, and nothing that happened to Plaintiff was precipitated by Naranjo's personal acts in working the mechanism of the van.

If Anita Trujillo's injuries did not arise out of "operation" of the van, neither were they caused by "maintenance" of the vehicle. Defendants have found no New Mexico cases construing the meaning of the word "maintenance" as it is used in Section 41-4-5 of the Tort Claims Act, but they have located very persuasive authority interpreting its meaning as used in Section 41-4-6, which waives immunity for the "maintenance" of buildings, parks, machinery, equipment, and furnishings, and in Section 41-4-11, which waives immunity for the defective "maintenance" of highways and streets.

Villanueva v. City of Tucumcari, 1998-NMCA-138 ¶ 8, 125 N.M. 762, 965 P.2d 346, held that "maintenance," within the meaning of the Tort Claims Act provision waiving tort immunity for negligent maintenance of sidewalks, did not include the installation of wheelchair ramps between sidewalks and streets at street intersections,

because such installation involved structural change in a sidewalk, rather than upkeep and repair of a sidewalk. Consequently, a wheelchair user injured by the absence of a ramp could not assert her claim against the municipality. Villanueva's injury may have arisen out of design defects, but was held to have nothing to do with a failure of maintenance.

Similarly, in *Bierner v. City of Truth or Consequences*, 2004-NMCA-093 ¶ 21, 136 N.M. 197, 96 P.3d 322, the Court of Appeals commented that the erection of barriers or curbs on a roadway, and alteration of ingress and egress from a parking lot, appear to involve design of a roadway, there being no applicable waiver of immunity for road design. Once again, this decision finds a definite distinction between "maintenance" for which immunity is waived, and design decisions, for which immunity is retained.

Plaintiff attributed her mishap to various omissions on the part of Tracy Naranjo and Josephine Velasquez. She offered the opinion that Josephine Velasquez should have "... Sen[t] them to classes to show them [drivers] how to load in and load the old people." When asked what Tracy should have done that she failed to do, Plaintiff responded "she didn't help the people at all". She also asserted that Tracy should have behaved like the driver from Camel Rock, who "helps them get up, make sure that the step is high enough for you so you don't fall or slip, you know." (Exhibit A, p. 76, lns 9-23)

In short, Plaintiff faults the City and its employees, for failure to act as reliable caretakers of the elderly, and for failure to redesign the bus to incorporate additional safety equipment. At no point does Trujillo allege that her injury arose out of the way in which Tracy Naranjo drove the van, nor does she allege that Naranjo was negligent in

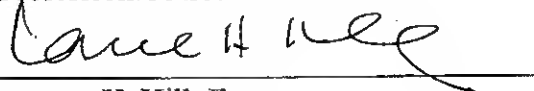
selecting a dangerous location to park the van. She does not contend that her injuries arise from wear and deterioration of the van (for example, the failure of worn or unadjusted brakes), but simply claims that additions of extra safety items, such as a ramp, might have prevented her injury.

CONCLUSION

Nothing in Plaintiff's Complaint, nor in her deposition, reveals that her suit is founded upon negligent "operation" or "maintenance" of the van. For this reason, Defendants are entitled to the full immunity granted to them by the Tort Claims Act, and Anita Trujillo's suit should be dismissed on summary judgment.

Respectfully submitted,

CIVEROLO, GRALOW, HILL & CURTIS
A Professional Association



Lawrence H. Hill, Esq.
Attorney for Defendants
P.O. Drawer 887
Albuquerque, New Mexico 87103
505-842-8255 Office
505-764-6099 Facsimile

THIS CERTIFIES that a true and correct copy of the foregoing was filed via the First Judicial Odyssey File & Serve system and was mailed via U.S. mail on the 28 day of December, 2012 to the following counsel of record:

Phillip Trujillo, Esq.
Attorney at Law
P.O. Box 730
Española, New Mexico 87532
505-747-0311
truchaspeak@gmail.com
Attorneys for Anita Trujillo

Lawrence H. Hill
Lawrence H. Hill, Esq.

Dolores Esquibel
House #54 State Rd. 581
Espanola, New Mexico 87532

From: Dolores Esquibel

Risk Management/City Manager
City of Espanola
405 N. Paseo de Oñate
Espanola, NM 87532

Police Department/Chief of Police
411 N Paseo De Oñate
Espanola, NM 87532

Subject: Misconduct of City of Espanola
Officer Solomon Romero

Ref.: Notice of Tort Claim, Dolores Esquibel, Misconduct, Illegal Entry, Harassment, and Civil Rights Violations.

GREETINGS:

Pursuant to the New Mexico Tort Claims Act, NMSA 1978, §41-4-1 et. Seq., and any other applicable statute, ordinance or regulation, notice is hereby given you of a compensable claim for damages and the intent to file a lawsuit by Dolores Esquibel, for damages suffered as a result of negligence or willful misconduct by a City of Espanola Police employee Office Romero and employee of City of Espanola by entering my property and conducting an unlawful search in my home .

On the morning of January 4, 2013, Officer Romero knocked at my door and asked if an Iran Salazar lived here at this house. I said, "No. That he was staying next door in my guest house." He did not identify himself to me as an officer he walked to my guest house and I followed him. He just walked in without knocking and asked several people, "Which one of you is Iran Salazar?" My son then answered, "I'm Iran," and then Officer Romero identified himself as Officer Romero from the City of Espanola.

My son then asked him if he had a warrant. Officer Romero replied, "No. I don't." Officer Romero began questioning Iran about stolen items. Soon before I knew anything Officer Romero didn't find what he was looking for he became very angry and pushed Iran down the steps. Iran Salazar suffered several injuries from this altercation. I asked Officer Romero, "Why did you push him? You didn't have to do that. Why are you here out of your jurisdiction?" Officer Romero then shouted to me, "Shut up or I will take you to jail." I replied to Officer Romero, "Which of my civil rights are being violated?" Officer Romero shouted out again, "He

was going to get a warrant for Iran Salazar's arrest and make it so that, it's going to be a \$10,000.00 cash only bond and I will be back."

Officer Romero claimed that he was calling for assistance from the State Police and Sheriff's Department. Since nobody arrived I became suspicious that the act was illegal, unethical, and dishonest. In the afternoon of January 4, 2013, Officer Romero returned back to my residence with a alleged warrant and there was 2 other officers that were with him. Two officers returned with Officer Romero, one from Santa Clara Pueblo and another from Rio Arriba County Sheriff's Department. Officer Romero refused to show me the warrant that he obtained. He also expressed to me that, it did not concern me. All the officers then entered my guest house looking around and found nothing.

These actions by Officer Solomon Romero caused me great stress and embarrassment with my neighbors.

Dolores Esquibel

Dolores Esquibel

STATE OF NEW MEXICO

COUNTY OF Rio Arriba

This instrument was acknowledged before me on March 22, 2013 (date) by Dolores S. Esquibel (name of person(s)).

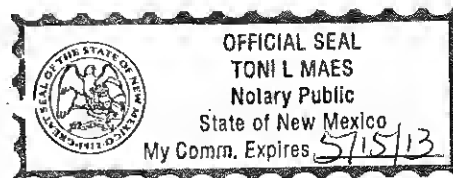
[Signature]

Notary Public

Printed Name: Toni L Maes

My commission expires:

5/15/2013



Yvonne K. Quintana
Attorney at Law, P.C.

Received 2/26/13
forwarded to
Steve Corney +
Frank Coppel 2/26/13

February 26, 2013

Alice Lucero
Mayor
405 Paseo De Onate
Española New Mexico 87532

Joe Duran
Acting City Manager
405 Paseo De Onate
Española New Mexico 87532

Eric Garcia
Chief of Police
1316 E. Calle Adelante
Española, New Mexico 87532

Re: Notice of Tort Claim
Chris Wally Martinez

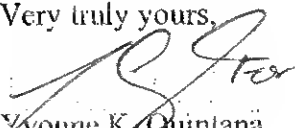
Dear Mrs. Lucero and Mssrs. Duran and Garcia:

This letter constitutes notice of tort claim on behalf of Mr. Chris Wally Martinez for an incident, which occurred concerning unlawful conduct by Officer Joseph Branch.

On the date in question, Mr. Martinez was arrested for resisting or obstructing an officer. In fact, he was wrongfully detained, arrested and subjected to force and brutality when tazerred multiple times by an officer when he was not resisting. The lack of training and unsafe conditions are the basis of this claim.

Thank you for your attention to this matter.

Very truly yours,


Yvonne K. Quintana
Attorney at Law

YKQ:jjg
Cc: Chris Wally Martinez

P. O. Box 2395, Espanola, New Mexico 87532
306 Paseo de Onate, Espanola, New Mexico 87532
(505) 753-1911 fax: (505) 753-2279

OCCURRENCE DATE(S) ON OR BETWEEN				DATE REPORTED		UNIFORM INCIDENT REPORT				DRI NO. NM0210100		INCIDENT NO. 12-06-200		PAGE 1		OF 1							
MM/DD/YY 06/20/2012		MM/DD/YY 06/20/2012		MM/DD/YY 06/21/2012						AGENCY / COUNTY ESPANOLA POLICE				DISTRICT NO. A		OPTIONAL USE (CASE NO., ETC.)				SUBSIDIARY FORCE NO.		NO. OF UNITS ENT.	
TIME 21:15		DAY OF WEEK Wed		TIME 21:45		DAY OF WEEK Wed		TIME 02:46		DAY OF WEEK Thu		ADDRESS/LOCATION OF INCIDENT HILL STREET				CITY ESPANOLA		ZIP 87532		GANG REL. YES NO		HATE CRIM. YES NO	

OFFENSE	ADOL. ON SUPP.			OFFENSE / INCIDENT				STATUTE OR ORDINANCE		FEL. M.D.	ATTEMPTED	COMPLETED	UCR OFFENSE CODE	CRIMINAL ACTIVITY CODE	LOCAT CODE	WEAPON CODE UP TO 3 PER OFFENSE	OFFENSE(S) SUSPECTED OF USING ALCOH. DRUG CONF. UNK.			
				1 INFORMATION ONLY REPORTS				00-00-044					X	900		20	99			X
				2																
				3																

SUBJECTS (VICTIMS / SUSPECTS / PERSONS / BUSINESSES)	ADOL. ON SUPP.		PERSON CODES		V-VICTIM	C-CITIZEN	S-SUSPECT	A-ARRESTED	TYPE CODES		F-FINANCIAL INST.	R-RELIGIOUS	INJURY CODES		L-SEVERE LACERATION	T-LOSS OF TEETH			
			G-PARENT/GUARDIAN		W-WITNESS	I-INTERVIEWED	M-MISSED PERSON/RUNAWAY	INDIVIDUAL		P-POLICE	O-OTHER	S-SOCIETY/PUB	B-APPARENT BROKEN BONE		M-APPARENT MINOR INJURY	U-UNCONSCIOUSNESS			
			R-REPORTING PERSON		D-DECEASED			B-BUSINESS		G-GOVERNMENT	U-UNKNOWN	I-POSSIBLE INTERNAL INJURY		O-OTHER MAJOR INJURY	N-NONE				
	PERSON CODE	TYPE CODE	1-NAME (LAST, FIRST, MIDDLE)				SOCIAL SECURITY NO.				DOB		AGE (RANGE)	SEX	RACE				
	M	I	TAPIA, DOLORES P				585-33-5176				11/01/1975		36	F	X				
	STREET ADDRESS				APT. NO.		RES. PHONE		HEIGHT		WEIGHT		HAIR		EYES				
	HILL STREET								4'10"		117		BRC		BRO				
	CITY				STATE		ZIP		BUS. PHONE		VICT. OF OFF. NO.		VICT. OF SUSP. NO.		REL.				
	ESPANOLA				NM		87532												
	OCCUPATION				EMPLOYER / SCHOOL				EMPLOYER / SCHOOL ADDRESS				GANG AFFILIATION						
ALIAS / NICKNAME				MARKS, SCARS, TATTOOS				ARMED WITH (SEE CODES)				TYPE OF ARREST							
												ON/WRN CITED CUST.							
DRIVER'S LICENSE NO.				D.L. STATE		ARREST / CITATION NO.		F.B.I. NO.		S.I.D. NO.		NIC NO.		RES. STATUS					
103572959														RES. NON					
PERSON CODE		TYPE CODE	INJURY CODE		2-NAME (LAST, FIRST, MIDDLE)				SOCIAL SECURITY NO.				DOB		AGE (RANGE)	SEX	RACE		
V		G			ESPANOLA POLICE DEPARTMENT				00/00/0000				00/00/0000				X		
STREET ADDRESS				APT. NO.		RES. PHONE		HEIGHT		WEIGHT		HAIR		EYES		ETHNIC		AGG. ASSAULT	
1316 CALLE ADELANTE C						505-747-6002		'0"								HISP NON UNK		JUSTHOM CODE	
CITY				STATE		ZIP		BUS. PHONE		VICT. OF OFF. NO.		VICT. OF SUSP. NO.		REL.		VICT. OF SUSP. NO.		REL.	
ESPANOLA				NM		87532													
OCCUPATION				EMPLOYER / SCHOOL				EMPLOYER / SCHOOL ADDRESS				GANG AFFILIATION							
ALIAS / NICKNAME				MARKS, SCARS, TATTOOS				ARMED WITH (SEE CODES)				TYPE OF ARREST							
												ON/WRN CITED CUST.							
DRIVER'S LICENSE NO.				D.L. STATE		ARREST / CITATION NO.		F.B.I. NO.		S.I.D. NO.		NIC NO.		RES. STATUS					
														RES. NON					
PERSON CODE		TYPE CODE	INJURY CODE		3-NAME (LAST, FIRST, MIDDLE)				SOCIAL SECURITY NO.				DOB		AGE (RANGE)	SEX	RACE		
									00/00/0000				00/00/0000				X		
STREET ADDRESS				APT. NO.		RES. PHONE		HEIGHT		WEIGHT		HAIR		EYES		ETHNIC		AGG. ASSAULT	
								'0"								HISP NON UNK		JUSTHOM CODE	
CITY				STATE		ZIP		BUS. PHONE		VICT. OF OFF. NO.		VICT. OF SUSP. NO.		REL.		VICT. OF SUSP. NO.		REL.	
OCCUPATION				EMPLOYER / SCHOOL				EMPLOYER / SCHOOL ADDRESS				GANG AFFILIATION							
ALIAS / NICKNAME				MARKS, SCARS, TATTOOS				ARMED WITH (SEE CODES)				TYPE OF ARREST							
												ON/WRN CITED CUST.							
DRIVER'S LICENSE NO.				D.L. STATE		ARREST / CITATION NO.		F.B.I. NO.		S.I.D. NO.		NIC NO.		RES. STATUS					
														RES. NON					
ADOL. ON SUPP.		VEH. STATUS CODE		1-STOLEN		4-REC. (STOLEN OTHER JURIS.)		7-DAMAGED/VANDALIZED		VEH. TYPE CODE		61-AIRPLANE		24-OTHER MOTOR VEHICLES		38-WATERCRAFT		43-ATV	
				2-BURNED		5-SEIZED		8-SUSPECT'S VEHICLE				05-AUTOMOBILE		28-MOTOR HOMES		41-MOTORCYCLE		44-TRAILER	
				3-REC. (STOLEN LOCALLY)		6-ABANDONED		9-VICTIM'S VEHICLE				37-TRUCK (PICK-UP)		42-SNOWMOBILE					
YEAR	MAKE	MODEL		BODY STYLE		LICENSE NO.		LIC YEAR		LIC. ST.		TOP COLOR		BTM. COLOR		VALUE / DAMAGE EST.			
																0.00			
REGISTERED OWNER'S NAME (OR SAME AS SUBJECT NO.)								VIN				DISTINGUISHING FEATURES / VISIBLE DAMAGE							
ADDRESS								TDW TD / BY				CAN VEH. REL.				NIC NO.			
												YES NO							
AGENCY OPTIONAL USE																			

PROPERTY	PROPERTY STATUS		1 - STOLEN 2 - STOLEN & RECOVERED 3 - RECOVERED (STOLEN THIS JURIS)		4 - RECOVERED (STOLEN OTHER JURIS) 5 - EVIDENCE 6 - LOST		7 - FOUND 8 - COUNTERFEIT/FORGED 9 - DAMAGED/DESTROYED/VANDALIZED		10 - BURNED 11 - SEIZED 12 - USED IN CRIME		13 - SAFEKEEPING 14 - UNKNOWN 15 - EMBEZZLED								
	PROPERTY TYPE		02-ALCOHOL 04-BICYCLES 06-CLOTHING/FURS 07-COMPUTER HARDWARE/SOFTWARE 08-CONSUMABLE GOODS 09-CREDIT/DEBIT CARDS 10-DRUGS/NARCOTICS 11-DRUG/NARCOTIC EQUIPMENT		12-FARM EQUIPMENT 13-FIREARMS 14-GAMBLING EQUIPMENT 15-HEAVY CONSTRUCTION/INDUSTRIAL EQUIP 16-HOUSEHOLD GOODS 17-JEWELRY/PRECIOUS METALS 18-LIVESTOCK 19-MERCHANDISE		20-MONEY 21-NEGOTIABLE INSTRUMENTS 22-NON-NEGOTIABLE INSTRUMENTS 23-OFFICE EQUIPMENT 24-PURSES/HANDBAGS/WALLETS 25-RADIO/TV/VCR 26-RECORDINGS-AUDIO/VISUAL 27-STRUCTURES-SINGLE OCCUPANCY		30-STRUCTURES-OTHER DWELLINGS 31-STRUCTURES-OTHER COMM/BUSINESS 32-STRUCTURES-INDUSTRIAL/MANUF 33-STRUCTURES-PUBLIC/COMMUNITY 34-STRUCTURES-STORAGE 35-STRUCTURES-OTHER 36-TOOLS 38-VEHICLE PARTS/ACCESSORIES		40-SKIBSKI EQUIPMENT 77-OTHER 88-PEN/INQ INVENTORY 99-SPECIAL CATEGORY								
	DRUG TYPE		A-CRACK B-COCAINE C-HASHISH		D-HEROIN E-MARIJUANA F-MORPHINE		G-OPIMUM H-OTHER NARCOTICS I-LSD		J-PCP K-OTHER HALLUCINOGENS L-AMPH/AMETHAM.		M-OTHER STIMULANTS N-BARBITURATES O-OTHER DEPRESSANTS		P-OTHER DRUGS U-UNKNOWN X-OVER 3 TYPES						
	FIELD UNIT OF MEASURE		GM-GRAM KG-KILOGRAM OZ-OUNCE LB-POUND GL-GALLON NP-NO. PLANTS LT-LITER FO-FLUID OUNCE DU-DOSAGE UNITS ML-MILLILITER																
	1-PROPERTY STATUS		PROPERTY TYPE		TYPE OF ITEM		MAKE / BRAND		MODEL		CALIBER		VALUE (EXCEPT DRUGS)						
SUSPECTED DRUG TYPE		QUANTITY/ UNIT OF MS.		DESCRIPTION (COLOR, SIZE, FEATURES, ETC.)				SERIAL / OAN				NIC NO.							
2-PROPERTY STATUS		PROPERTY TYPE		TYPE OF ITEM		MAKE / BRAND		MODEL		CALIBER		VALUE (EXCEPT DRUGS)							
SUSPECTED DRUG TYPE		QUANTITY/ UNIT OF MS.		DESCRIPTION (COLOR, SIZE, FEATURES, ETC.)				SERIAL / OAN				NIC NO.							
3-PROPERTY STATUS		PROPERTY TYPE		TYPE OF ITEM		MAKE / BRAND		MODEL		CALIBER		VALUE (EXCEPT DRUGS)							
SUSPECTED DRUG TYPE		QUANTITY/ UNIT OF MS.		DESCRIPTION (COLOR, SIZE, FEATURES, ETC.)				SERIAL / OAN				NIC NO.							
4-PROPERTY STATUS		PROPERTY TYPE		TYPE OF ITEM		MAKE / BRAND		MODEL		CALIBER		VALUE (EXCEPT DRUGS)							
SUSPECTED DRUG TYPE		QUANTITY/ UNIT OF MS.		DESCRIPTION (COLOR, SIZE, FEATURES, ETC.)				SERIAL / OAN				NIC NO.							
M.O. EVENT CODES: (AGENCY OPTIONAL USE)										TOTAL VALUE STOLEN \$		TOTAL VALUE REC. \$		MOD. OR SUPP.					
NARRATIVE																			
CERT. / STATUS	1 WILL PROSECUTE/TESTIFY SHOULD THE OFFENDER BE ARRESTED.*		YES		NO		I UNDERSTAND IT IS A CRIMINAL OFFENSE TO FILE A FALSE REPORT TO POLICE.*		COMPLAINANT / VICTIM CERTIFICATION SIGNATURE		X		DATE						
	REPORTING OFFICER		VIGIL, JOHN		I.D. NO.		818		DATE		06/21/2012		DETECTIVE / FOLLOW-UP OFFICER / REFERRED TO		I.D. NO.		DATE		
	ASSISTING OFFICER				I.D. NO.				DATE				PROCESSED BY		DATE		DATA ENTRY PERSON		
	APPROVING OFFICER				I.D. NO.				DATE				STATUS		CASE CLEAR		HOW CLEAR		
	AGENCY OPTIONAL USE (DISTRIBUTION, OTHER OFFICERS, ETC.)										CASES CLEARED BY THIS ARREST		CASE NO.		CASE NO.		CASE NO.		REV. 2/93

Incident Narrative

12-06-200

12-06-200

On 20 June 2012, at approximately 2115Hrs patrolling the Westside of Espanola. I was traveling Eastbound down Hill Street when I heard a "thud" against my right rear door. I then turned around and spotlighted the residence I was passing on the right hand side while coming down Hill Street where I had heard the noise against my units rear door due to on the left hand side while traveling Eastbound down Hill Street there is a Plaza with no residence on that side. I spotlighted a White in color residence enclosed with a fence around it, I pulled into the residence with all of the residence lights out, but a vehicle with its hood up and both front driver and passenger windows down. I then left my unit and proceeded to the front door and knock at it to see if anyone was home, Nobody answered the door, but could tell somebody was there because on the front porch was a soda can half filled and still cold and knew from prior patrolling that area that juveniles were seen at that residence. I then proceeded to the vehicle with open windows and engine hood up, and was looking in the vehicle for the subjects maybe hiding in the vehicle, when I heard someone say, "Can I help you and why are you looking in my vehicle from a vehicle she was driving getting ready to pull in to the residence from the street, I asked if she had any identification and she told me, This is private property and she told me that she didn't have to show me anything I told her that my unit had been hit by something as I was passing the residence, and that I was investigating it and that was why I was there, I asked the female (later identified as a Dolores P. Tapia) if she had any kids at the house right now and she replied to me "Yes my son." I asked her again if she had any identification, "Once again telling me she didn't have to give me any, and in fact I want to speak to your supervisor, at which time I notified Unit 13 Officer Jose Talache via radio my location and that my unit was hit by something from the residence and that the female wanted to talk to my supervisor. Officer Talache relayed back that he was on the way, while waiting for his unit to arrive the female told a young juvenile boy who was with her in the vehicle when they pulled up to go get the boy who was in the residence, as he went to get the boy, a man with no shirt came out from a residence who stated that he lived next to Ms. Tapias residence said what I was looking for, Ms. Tapia then yelled, at him it was none of his business and to go back to his residence. I told him that my unit was hit by something while I was passing this residence and he said that "One of boys had run through his yard and around the wall and into the back of the residence" At this time a teenage male appeared in a white shirt and black shorts from the residence, and his mother, (Ms. Tapia) asked him if he had thrown anything and he stated, "We were throwing the football and we might have hit his car." I then told him "Why then did he run if he didn't do anything wrong and that was all he had to say?" And it is pitch black out here, you can't see anything. He replied, "That he was scared of police!" (But later to find out after Ms. Tapia gave her information to my Supervisor and finding out who the family were identified as from the information provided, that myself and her husband served as officers together in another law enforcement agency?) I then asked the boy what his name was, and he replied that this was private property and he didn't have to say, at which time, Ms Tapia told him, "to be quiet before he got arrested." My Supervisor Officer Talache then arrived and I went to his vehicle and I told him what I had and that the female wanted to talk to him and that she won't give me any information on who she was. Mrs. Tapia's attitude change to pleasant once she realized that my supervisor was, Officer Talache, and she replied "Hello Jose," and then looked at me and said, "I am not scared of you," and I replied, I am not scared of you either, at which time, one of her boys got into my face and told me, Not to talk to his mom that way and I told him to get back, and he told me not to disrespect his mom that way, getting once again in my face. I then grabbed him by his neck and pushing him away from me. At that time, we were separated and I was walked away from the area with Officer Jose Martinez. As I was walking away the teenager with the white and black shorts who had hit my unit, said something to me as I left. Officer Talache stayed and talked to the female and the teenager admitted to hitting my unit to him. I was then told to do a Incident Report for the incident.

Case Supplement
12-06-200_1

On June 20, 2012 at approximately 2115 hours while in full uniform in a marked patrol unit displaying my badge of office in the City of Espanola in the County of Rio Arriba I was asked to proceed to a residence on hill street by officer J. Vigil in regards to a female subject that wanted to speak to officer Vigil's supervisor.

I arrived on scene and officer Vigil met me and briefed me on what had happened. Office Vigil stated that he was traveling east on Hill street and his vehicle was struck by what he believed was a ball of some sort. Officer vigil said that he stopped his vehicle and observed an unknown person running from the street. Officer vigil stated that he then attempted to located the person that was seen leaving the scene. Officer Vigil stated that he then started to look through the windows of a vehicle that was nearby because he believed that the unknown person possibly might be hiding in the vehicle Officer Vigil said that while he was looking through the car a female voice asked what he was doing at which time he told the female later identified as Ms. Deloris Tapia what had transpired.

Officer Vigil stated that when he asked Ms. Tapia for her identification she replied that he didn't have to give him anything because she was on private property and that she wanted to speak to his supervisor.

I exited my patrol car and immediately Ms. Tapia recognized me and greeted my by saying "Hi Jose". I responded back with a "hello" and walked over to where she was standing. At which time Ms. Tapia stated "Your officer if very rude" all the while pointing her finger at him. Ms. Tapia said that Officer Vigil had no right to be looking in her vehicle because it was on private property. She also said that Officer Vigil Had no right to talk to her that way that he was because she "knows her rights". At that time Officer Vigil attempted to explain again why he was there but Ms. Tapia responded to Officer Vigil and began to argue with him and closed distance to Officer Vigil . Officer vigil repeatedly told Ms. Tapia to "Shut up" and "Be Quite" but Ms. Tapia continued. At that time Ms. Tapia's son Sebastian Tapia closed distance to Officer Vigil and began to yell at him "Don't disrespect mom". Office Vigil told Sebastian Tapia to shut up and again Sebastian yelled at Officer Vigil not to disrespect his mother. Officer Vigil then grabbed Sebastian by the throat and pushed him away.

Officer J. Martinez and I separated Officer Vigil and Sebastian and Officer Martinez removed Officer Vigil from the scene. I spoke with Ms. Tapia and Sebastian and explained to them that officer Vigil was trying to figure out what had happened to his patrol car and that Ms. Tapia and her son needed to be quite when an officer was trying to conduct an investigation. Ms Tapia and her son were understanding and agreed but also concluded that Officer Vigil was rude and unprofessional. Ms. Tapia stated that she was going to file a complaint with the chief in the morning. I told her that was well within her right and that I would speak with Officer Vigil on what had transpired that night and left the scene.

Officer J. Talache

Case Supplement
12-06-200_1

On June 20, 2012 I Officer Jose Martinez with the Espanola Police Department while in full uniform displaying my badge of office in a fully marked police unit was patrolling Riverside and training Officer James Gallegos. We heard via radio that Officer John Vigil needed a Supervisor on Hill Street. I then advised Officer Gallegos to proceed that way as well. Upon our arrival I exited the patrol vehicle from the passenger side and seen Officer Vigil standing with a female subject and some juveniles. Officer Jose Talache, who was the Supervisor, arrived just in front of myself and Officer Gallegos. Upon walking to the scene I heard the female subject tell Officer Vigil "I'm not afraid of you". Officer Vigil replied and told her he wasn't afraid of her either. Officer Vigil then repeatedly told her to shut up and be quite. The female subject would not stop talking and advised Officer Vigil "I know my rights". At that point a young male advised Officer Vigil not to disrespect his mother. Officer Vigil also advised the male to be quite. The male subject then advanced on Officer Vigil and was in his face. The male subject was yelling at Officer Vigil. Telling him "Don't disrespect my mom". Officer Vigil grabbed him by the throat and pushed the juvenile male away from him. I grabbed Officer Vigil by the shoulders and led him away from the scene to calm down. Officer Talache stayed and talked to female and the juveniles. Once he was done talking to them he advised Officer Vigil to do an informational report on the incident. Officer Vigil then walked to his patrol car and we cleared the scene.